CONTRACTING AT ENVIRONMENTAL PROTECTION AGENCY AND ITS EFFECT ON FEDERAL EMPLOYEES

HEARING

BEFORE THE

SUBCOMMITTEE ON CIVIL SERVICE

OF THE

COMMITTEE ON POST OFFICE AND CIVIL SERVICE HOUSE OF REPRESENTATIVES

ONE HUNDRED FIRST CONGRESS

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CONTRACTING AT ENVIRONMENTAL PROTECTION AGENCY AND ITS EFFECT ON FEDERAL EMPLOYEES

THURSDAY, FEBRUARY 23, 1989

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL SERVICE OF THE
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:35 a.m., in room 311, Cannon House Office Building, Hon. Gerry Sikorski (chairman of the subcommittee), presiding.

Mr. SIKORSKI. Good morning. The subcommittee will come to order. This morning we begin what we expect will be a series of hearings focusing on the Environmental Protection Agency's contracting practices and its effect on the federal work force within the Agency.

The types of problems we will talk about today are not new. The Agency's contracting policies have been the subject of much criticism and analysis. A central concern raised has been that the Agency has simply contracted away too much of its authority to the private sector, a private sector that may not always have the best interests of the public in mind.

The Agency is not unaware of its problems in this area. An internal EPA memorandum dated December just this last year entitled, "Contracts Management: The People and the Process," stated that "contract dollars represented 54 percent of the EPA Operation Plan without construction grants included and an impressive 31 percent when construction grants are included." The memorandum then stated that "The Agency is highly leveraged to say the least, and extramural resources are climbing rapidly at the same time that in-house FTE (full time equivalents) to manage these contracts are barely inching upwards."

Now, while the Agency is to be commended for its acknowledgement of some of its internal management problems, the conclusion here is that the Agency has apparently crossed the fine line between using contractor support to perform clean-up work and other tasks which require quick turnaround, and using contractor personnel as replacements for federal workers, thereby circumventing the Civil Service laws.

As testimony this morning will show, the Agency contracts out all kinds of jobs from Superfund clean-up work to clerical work, and what is worse, we have found that contractor personnel contracted to perform professional level technical services at $30 per

hour are instead answering phones at EPA because the Agency is understaffed.

Now, another problem we will hear about this morning is EPA's inadequate management of contractor work. During their investigation, auditors from the EPA's Office of the Inspector General found that EPA deputy contract officers failed to use basic management tools available to monitor costs and performance in order to prevent cost overruns and shoddy work.

Another significant problem that we will discuss this morning is the Agency's use of cost-plus-award-fee contracts. These award contracts allow contractors to recoup all of their costs plus a base fee, plus an award. The amount of the award is based upon a contractor's performance.

The Agency began using these types of contracts to provide contractors with an incentive to perform high-quality work quickly, thereby earning an award fee. Unfortunately, as testimony will indicate, the award fee process has failed in many instances and the Agency has paid award fees even where the contractor's performance was substandard.

Finally, testimony received by the subcommittee indicates that the Agency is in serious danger of losing control over mandates which have been entrusted to it by Congress, and in danger of losing the remaining dedicated civil servants employed by the Agency.

The problems here are not new, as I said earlier, but we do now have a new administration. President Bush campaigned on a promise of a brighter future for the environment so that our children and their children will have a better future as well. The appointment of Mr. Reilly to head the Agency is a good start.

However, a commitment to the environment must trickle down through all levels of the Agency, and a commitment to qualified, unbiased and dedicated civil servants who can maintain an institutional knowledge within the Agency has yet to be forthcoming.

We have a statement from Senator Pryor which will be placed in the record at this point.

[The statement of Senator Pryor follows:]

STATEMENT OF SENATOR DAVID PRYOR
FEBRUARY 23, 1989

Mr. Chairman, I want to commend you for holding this hearing on the Environmental Protection Agency's use of consultants. I understand you plan to hold a series of hearings on EPA and I hope you are able to bring some sunshine into what has been called the "Shadow Government."

The use of consultants to perform vital governmental tasks has been a longstanding interest of mine. I want to warn you though, the longer I have worked at this issue, the more confusing it becomes.

Earlier this month, I held a hearing on this very issue and heard conflicting testimony about what these consultants are really doing for EPA. If you believe the contract files, consultants are doing the following:

- Researching FOIA requests
- Drafting memos for top EPA officials
- Preparing congressional testimony
- Drafting international agreements on behalf of EPA
- Writing regulations

However, when you ask EPA officials, they say that the consultants aren't really doing the actual work, they are just "assisting." That leaves me with one unanswered question, if the consultants really aren't doing this work, then why are they being paid millions of dollars?

Mr. Chairman, these consultants are not just editing and advising. In fact, it is my belief that they are, in some

cases, actually performing the basic work of the agency. I must say, to be fair, that this problem is not only at EPA. I have discovered it throughout our government.

Last year, EPA fought off my attempt to modestly reduce their spending on consultants by contending that any such reduction would bring their agency to a standstill. After reviewing their contract files and seeing all that consultants do for EPA, I am unfortunately inclined to agree with them.

Mr. Chairman, in closing, let me offer you a challenge as you embark upon your review of this agency. I have here an official organizational chart of the EPA, listing the various offices within the agency. I encourage you to develop the unofficial organizational chart that includes the "Office of Consulting Services."

We know that EPA employs 15,000 federal employees. We do not know how many contractors or consultants work in this "Office of Consulting Services." We know that EPA employees are subject to strict conflicts of interest rules. Neither we nor the EPA know what private sector clients these consulting firms have. To maintain the public trust in the integrity of government, we must be able to unequivocally state that these consulting firms do not have any conflicts of interest that adversely affect their service to the government.

Mr. Chairman, again, I commend you for taking on this important, though little understood, issue. If you are successful in discovering what is occurring in this "Office of Consulting Services, then you will have provided a great service to us all.

Mr. SIKORSKI. Our first panelist is Mr. Richard L Hembra. Mr. Hembra is the Associate Director for Environmental Protection Issues with the Resources, Community and Economic Development Division at the GAO, the U.S. General Accounting Office.

Mr. Hembra is accompanied by two colleagues, Mr. Jim Fowler, who is the Assistant Director of the division, and Ms. Sandy Eggart, the Chief Evaluator for this GAO examination of the EPA contracts. We want to thank you for the work that you have already done and thank you for taking on the additional work over a good period of time that we see forthcoming.

Mr. Hembra, why do you not begin. Let me just say, your entire statement plus attachments will be placed in the record as you wish, and you can use your time as you wish as well. Thank you.

STATEMENT OF RICHARD L. HEMBRA, ASSOCIATE DIRECTOR, ENVIRONMENTAL PROTECTION ISSUES, RESOURCES, COMMUNITY AND ECONOMIC DEVELOPMENT DIVISION, U.S. GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY JAMES FOWLER, ASSISTANT DIRECTOR, AND SANDRA EGGART, CHIEF EVALUATOR

Mr. HEMBRA. Thank you, Mr. Chairman. We appreciate being invited here today to discuss contracting at the Environmental Protection Agency.

GAO, as you know, has conducted a number of reviews of EPA's contracting activities over the past several years. As you requested, our presentation today will focus on three areas: trends in EPA contracting; the results of our contracting work at EPA; and the results of internal evaluations that EPA has performed of its own contracting activities.

First, let me give some perspective on contracting at EPA. EPA's dependence on contractors to accomplish its mission has increased over the last five years, from $491 million in fiscal year 1984, to an estimated $1.2 billion today.

Contract obligations this year account for about one third of EPA's budget, which is about $3.4 billion excluding waste water treatment construction grants. These individual contracts can range from $25,000 to over hundreds of millions of dollars.

Most EPA contractors are working under cost-plus-fee-type contracts. Unlike a fixed-price contract, in which an agreed-upon price is set for the contracted work, the cost-plus-fee contract reimburses the contractor for all allowable costs incurred plus a performance-based fee.

EPA uses this type of contract because it can be awarded quickly and it allows EPA flexibility in directing the contractor after the contract is awarded. It also is viewed as well suited for situations in which uncertainty exists regarding the work to be accomplished. However, cost-plus-fee-type contracts also carry inherent risks to the government, because fewer incentives exist under this arrangement for contractors to control costs.

EPA's contract management staff grew from 192 full-time equivalents in fiscal year 1984 to 286 in fiscal year 1988. That is a 49 percent increase. Almost all of this growth was in the Superfund program. Overall EPA during the same period has not increased

staffing as dramatically as it has for contract management staff: only about a 25 percent increase.

These numbers alone, however, do not give the total picture of EPA staff involvement in contracting activities. According to EPA, when you factor in project officers, work assignment managers, supervisory managers and procurement and contracts management division staff, at least one-half of EPA's professional and administrative employees are involved in some aspects of contract management.

Let me now briefly describe the types of problems GAO has surfaced with regard to EPA contracts. Over the last eight years we have issued 11 reports that have addressed contracting issues in programs such as air, water and Superfund as well as contracting EPA-wide. In many of these reports we identified contract management weaknesses that could result in substandard work being performed for EPA or in increased costs to the government.

Our March 1982 and January 1985 reports identified a number of EPA-wide weaknesses in contract management, and questioned EPA's reporting on its use of consultants. For example, we found cases where fixed-price contracts would have been more suitable for the work to be performed than cost-plus-fee contracts.

Also, EPA had directed that subcontracts be awarded without competition and work be done outside the scope of the contract. This action was in fact improper sole-source procurements.

EPA was not adequately preparing cost estimates to evaluate the contractors' work, nor closely overseeing the contractors' work itself. Furthermore, EPA did not always receive the products specified in the contract and the value of some of the products were questionable. Finally, EPA may have understated its use of consultants, as I have said before.

In our opinion the basic cause of the problems we identified in these reports was EPA's emphasis on speed and flexibility in contracting at the expense of sound contract management controls as required by federal procurement regulations.

Our July 1988 report focused on EPA contracts to assess contamination and design clean-up remedies at Superfund sites, and we noted several weaknesses that increased contracting costs.

For example, we reported that EPA did not challenge increased costs resulting from inadequate contractor performance, and awarded substantial performance-based fees to contractors for less than satisfactory performance. EPA also has had limited success in getting contractors to establish acceptable subcontracting management procedures.

This report again concluded that EPA emphasized speed in the contracting process over sound contract management. On February 3 of this year GAO testified on EPA's use of consultants before Senator Pryor's Subcommittee. We reported that EPA had used about $10.2 million for consultant contracts in fiscal year 1987. Our own analysis, however, indicated that at least $168 million was spent on consultant services contracts.

The under-reporting stemmed largely from ambiguity in OMB's consulting services definition, and a more narrow interpretation of that definition by EPA personnel.

Let me now discuss EPA's initiatives to address contracting problems. To begin with, the weaknesses we have pointed out over the years in our own reviews are not new to EPA. For example, EPA's procurement review steering group in 1982 reviewed several major areas of the procurement process and recommended changes primarily to streamline that process.

Although EPA's recommendations generally had merit, they tended to also emphasize speed and flexibility. Three years later, EPA initiated a contract management improvement program. It focused on four initiatives: 1) Increasing contract management resources; 2) Strengthening the project officer system; 3) Streamlining contract management process; 4) improving contracting guidance. EPA believes that it may take several years to realize the results of some of these initiatives because of the time required to implement new policies and to train its staff.

Again, in November 1988 EPA released another contract management study. It concluded that the focus of EPA's senior managers tended to be on contract completion rather than on contract management, and that senior managers believe that contracting is a way of life in EPA because of the lack of in-house staff, Agency expertise and the historical precedent.

The study also concluded that sound contract management is important to EPA's mission and that EPA's management consciousness of this must be raised. It is interesting to note that EPA's studies confirmed most of the weaknesses GAO has identified with EPA's contracting activities. In addition, EPA's proposed corrective actions have closely paralleled those recommended by GAO over the years.

In summary, let me reemphasize that EPA has relied heavily on contractors in carrying out its environmental mandates. In using contractors, however, EPA has emphasized getting the job done at the expense of sound contract management practices. This approach has resulted in a number of weaknesses such as inadequate contract oversight, problems with subcontracting activities, and rewarding inadequate contractor performance.

We also believe that EPA continues to understate its use of consultants. In the future EPA's reliance on contractors will likely increase and, should the Congress and the administration carry through with early promises to increase attention to environmental issues, EPA may have to rely on contractors even more, assuming that little or no increase in EPA staffing occurs.

To get the most effective environmental results for the dollar, we believe it is imperative that EPA develop and implement sound contract management practices. EPA's initiatives to strengthen its contract management are steps in the right direction. However, we remain concerned that if EPA fails to aggressively follow up on the implementation of these initiatives, the potential improvements that could result will be diminished.

Mr. Chairman, this concludes my prepared statement. I will be glad to respond to any questions that you may have.

[The statement of Mr. Hembra and attachments follows:]

United States General Accounting Office

Testimony

Sound Contract Management Needed at the Environmental Protection Agency

Statement of
Richard L. Hembra, Associate Director
Environmental Protection Issues,
Resources, Community, and Economic Development Division

Before the
Subcommittee on Civil Service
Committee on Post Office and Civil Service
House of Representatives

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to appear before you today to discuss contracting in the Environmental Protection Agency (EPA). As you may be aware, GAO has conducted a number of reviews of EPA's contracting activities over the past several years and has made several recommendations to the Administrator to strengthen EPA's contracting. Consistent with your interest, our presentation will focus on

--trends in EPA's contracting,

--the results of our major contracting reviews at EPA over the last 8 years, and

--the results of several internal EPA evaluations of its activities.

In summary, EPA depends heavily on contractors to complete its mission, and indications are that EPA will continue to use contractors to a large extent in the future. EPA's contract obligations have increased over the years to more than $1 billion in fiscal year 1988, or about one-third of its budget. Our work has shown numerous weaknesses in EPA's contract management, in such areas as cost controls, subcontractor oversight, and quality of contractor performance. In addition, EPA's internal evaluations of its contracting activities have indicated problems that to a large extent are similar to those we have identified. These efforts have led to EPA's taking a number of initiatives to address its contracting problems. Recent studies by EPA, however, indicate that these initiatives have yet to eliminate the Agency's basic contracting weaknesses. The core problem blocking progress appears to be EPA's continued emphasis on speed in awarding and completing work done under contract with less attention given to sound

contract management. We believe that until a more equitable balance is struck between these two competing demands, EPA will have no assurance that it is getting quality products and services for its money.

I would now like to put EPA's contracting activities and identified weaknesses in their proper perspective and context.

EPA IS HIGHLY
CONTRACTOR DEPENDENT

EPA's dependence on contractor support to accomplish its mission has increased over the last 5 years from $491 million in fiscal year 1984 to an estimated $1.2 billion today. For fiscal year 1989, contract obligations account for about one-third of EPA's budget, which is about $3.4 billion excluding waste water treatment plant construction grants.[1]

Most of EPA's contract dollars are in the Superfund program, with estimated obligations at about $655 million this fiscal year. According to EPA records, 10 contractors accounted for over two-thirds of the contract obligations for fiscal year 1988. These contractors are involved in a broad spectrum of EPA activities, including technical support to EPA program offices for such things as policy analyses, hazardous waste cleanup, automatic data processing support, laboratory operation and maintenance, and program evaluation. Most of these contractors are working under cost-plus-fee-type contracts. Unlike a fixed-price contract in which a price is set for the contracted work--such as Superfund site cleanup construction contracts--a cost-plus-fee contract provides for reimbursement to the contractor for all allowable costs incurred plus a base fee and/or award fee. EPA uses this

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[1]See attachments II, III, and IV for details on EPA's contracting budget, activity, and staffing.

type of contract extensively because it can be awarded more quickly and it allows EPA a great deal of flexibility in directing the contractor after the contract is awarded. EPA also uses this type of contract because it is well suited for situations in which a large degree of uncertainty exists regarding the work to be accomplished--such as in designing and planning Superfund site cleanups where the extent and nature of pollution are unknown. However, cost-plus-fee-type contracts also carry inherent risks to the government because fewer incentives exist under this arrangement for contractors to control costs.

While EPA's contracting budget has increased, the number of contracts has decreased. For example, in fiscal year 1984 EPA awarded 588 contracts, compared to 375 in fiscal year 1988. According to EPA, these contracts currently range from as small as $25,000 to about $300 million. In addition, the number of active contracts has decreased about 16 percent from 1,482 in fiscal year 1984 to 1,246 in fiscal year 1988. While the number of contract awards and active contracts has decreased, the number of contract actions (i.e., contract modifications, change orders, funding increases) during that same period more than doubled from 4,530 to 10,912. According to the Director of EPA's Procurement and Contracts Management Division, the number of contract actions is a better gauge of EPA's contracting activity than the actual number of contracts because contract actions more appropriately reflect the amount of day-to-day staff effort involved in managing a contract.

EPA's contract management staff has also increased in recent years. It grew from a total of 192 full-time equivalents[2] (FTE) in fiscal year 1984 to 286 in fiscal year 1988--a 49-percent increase. Almost all of the growth was for contract management in the

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[2]An FTE is a personnel position representing the equivalent of one full-time person for one year.

Superfund area. Overall EPA staffing, however, has not increased as dramatically as contract management staff. EPA's overall staffing has increased from 11,415 FTEs in fiscal year 1984 to 14,263 in fiscal year 1988--a 25-percent increase.

The level of overall staff is important to the contracting issue because EPA depends on its program office staff, not its contract management staff, to manage the day-to-day work of its contractors. For example, project officers, who are program office staff in such offices as the Office of Air and Radiation, Office of Water, or the Office of Solid Waste and Emergency Response, are responsible for monitoring the contractor's work, providing technical guidance to the contractor, evaluating contractor performance, and providing feedback to contracting officers on contractor cost, performance, and scheduling. EPA estimates that 32 percent of its professional and administrative employees are directly involved in contract management as project officers or work assignment managers between 10 and 25 percent of the time. EPA also estimates that when it includes supervisory managers and the Procurement and Contracts Management Division staff at least one-half of its professional and administrative employees are involved in some aspect of contract management.

A new EPA contracting initiative, called the Alternative Remedial Contract Strategy, will increase the number of Superfund contracts per year. This strategy will replace the 5 large remedial contracts with 40 or more regional contracts. It will also decentralize more of the contract oversight responsibility by placing contracting officers in the regional offices. As of February 1, 1989, 21 regional contracts have been awarded. EPA believes it will increase the amount of competition and at the same time speed up the process by allowing decisions to be made at the local level rather than at headquarters. In our view, this approach also brings with it the need for even stronger EPA oversight.

EPA CONTRACTING WEAKNESSES WE IDENTIFIED

Over the last 8 years, we have issued 11 reports focusing on numerous facets of EPA contracting, 8 since 1985.[3] These reports have addressed specific contracting issues in programs, such as air, water, and Superfund, as well as contracting EPA-wide. In many of these reports, we identified contract management weaknesses that could result in substandard work being performed for EPA or in increased costs to the government. We also have recommended a number of management improvements to correct these problems. The following discussion highlights our findings from some of these earlier reports.

Two Early Reports Citing Contract Problems

Our March 1982 and January 1985 reports identified a number of EPA-wide weaknesses in contract management and questioned EPA's reporting on its use of consultants.[4] For example, we found that in some cases fixed-price contracts would have been more suitable for the work to be performed than the cost-plus-fee contracts that EPA used. Also, EPA had directed that subcontracts be awarded without competition and work be done outside the scope of the contract--which in effect become improper sole-source procurements. In addition, EPA was not adequately preparing cost estimates to evaluate the contractors' work nor closely overseeing the contractors' work performance. Furthermore, EPA did not always receive the product specified in the contract, and the value of

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[3]See attachment I.

[4]EPA's Use of Management Support Services (CED-82-36, Mar. 9, 1982) and The Environmental Protection Agency Should Better Manage Its Use of Contractors (GAO/RCED-85-12, Jan. 4, 1985).

some of the products it did receive was questionable. Finally, EPA may have understated its use of consultants because it used a limited definition of consulting services.

In our opinion, the basic cause of the problems we identified in our earlier reports was EPA's emphasis on speed and flexibility in procuring contract support at the expense of sound contract management controls required by federal procurement regulations. In our 1985 report, we recommended, among other things, that the EPA Administrator increase the priority given to procurement operations, establish procedures for monitoring contracts for cost-effectiveness, and require contract officers to monitor work assignments as required by federal and EPA regulations. As I will discuss later, EPA initiated a contract management improvement program in 1985 to address our concerns.

Recent GAO Report
on Superfund

One of our recent reports addressed contract management problems in the $10.1 billion[5] Superfund program. Our July 1988 report, which focuses on EPA contracts to assess conditions and design cleanup remedies at Superfund sites, noted several weaknesses that increased contracting costs.[6] For example, we reported that EPA did not challenge increased costs resulting from inadequate contractor performance, and furthermore awarded substantial performance-based fees to contractors with less than satisfactory performance. EPA also has had limited success in getting contractors to establish acceptable subcontracting

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[5]The Superfund program, enacted in 1980, was initially funded at $1.6 billion. The Superfund Amendments and Reauthorization Act of 1986 provided an additional $8.5 billion for a total of $10.1 billion for the program.

[6]Superfund Contracts: EPA Needs To Control Contractor Costs (GAO/RCED-88-182, July 29, 1988).

management procedures, especially subcontract award procedures. This report again concluded that EPA emphasized speed in the contracting process over sound contract management. We recommended, in addition to specific corrective actions, that the EPA Administrator affirm his commitment to cost control by communicating to EPA officials the importance of balancing timeliness, quality, and costs. EPA officials basically agreed with our findings and recently instituted action to implement our recommendations.

EPA's Use of Consultants

On February 3, 1989, we testified before the Subcommittee on Federal Services, Post Office and Civil Service, Senate Committee on Governmental Affairs, on EPA's use of consultants.[7] We reported that EPA is continuing to understate the extent of its consultant services contracts. In work that we completed in June 1988 on the federal government's use of consultants, we found that EPA identified a maximum of $10.2 million for consultant contracts in fiscal year 1987. Our analysis of EPA contract files, however, indicated that at least $168 million was spent on consultant services contracts. The underreporting stemmed largely from ambiguity in the consulting services definition and a more narrow interpretation of the definition by EPA personnel--the same issue we raised in our earlier 1982 report. We plan to revisit this issue at some later point in time to see what changes EPA implements to correct this problem.

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[7]The Environmental Protection Agency's Use of Consultants (GAO/T-GGD-89-5, Feb. 3, 1989).

EPA INTERNAL REVIEWS IDENTIFY CONTRACTING WEAKNESSES

The weaknesses we have pointed out in our contracting reviews are not new to EPA. EPA has conducted a number of internal evaluations of its contracting activities and identified similar weaknesses. For example, the Procurement Review Steering Group in 1982 reviewed several major areas of the procurement process and recommended changes primarily to streamline the process. Among other things, the Group recommended the elimination of unnecessary paperwork and the removal of various levels of review. Although the recommendations generally had merit, they also tended to emphasize speed and flexibility over sound contract management.

EPA's Contract Management Improvement Program was initiated in part as a result of our 1985 report. It focused on four initiatives: (1) increasing contract management resources; (2) strengthening the project officer system; (3) streamlining the contract management process; and (4) improving contracting guidance. In our 1987 report on EPA's program, we noted that EPA had taken several actions including implementing new training requirements for its project officers and adding 55 additional staff to strengthen contract management.[8] EPA also required contract management criteria in project officer position descriptions and performance standards. The guidance EPA developed included a cost analysis guide to assist in analyzing and monitoring contract costs and a guide for performing contractor purchasing system reviews to assess subcontracting activities. It may take several years to realize the results of some of these initiatives, according to the Acting Director, Procurement and Contracts Management Division, because of the time required to implement new policies and train staff members.

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[8] Contracts: Status of EPA's Contract Management Improvement Program (GAO/RCED-87-68FS, Jan. 12, 1987).

The most recent EPA evaluation is a November 1988 contracts management study conducted at the direction of the Assistant Administrator for Administration and Resources Management.[9] The study concluded that the focus of EPA's senior managers tended to be on contract completion rather than on contract management and that senior managers believe that contracting is a way of life because of the lack of FTEs, lack of Agency expertise, and historical precedent. In addition, many had the perception that the contracting process was working well. On the other hand, however, the study reported that those involved in the day-to-day contract management (primarily project officers and work assignment managers) had identified numerous problems in contract management and did not share the views of EPA senior managers. Moreover, the study found that 78 percent of those involved in managing contractors are either scientists or engineers, with limited knowledge of how to manage contracts. For example, many project officers and work assignment managers said they did not know how to enforce contract provisions. The study reported that EPA needs to balance out the employees' technical skills with essential contract administrative skills. Also, managers at all levels agreed that EPA needs more and better contract management training.

The study also concluded that sound contract management is as important to EPA's mission as is better science, risk-based management, and technology transfer--and that EPA's management consciousness of this must be raised. The study recommended, among other things, that the EPA Administrator, announce this contract management philosophy in a policy statement. EPA has begun to take action on the study's recommendations. We will be following up on the implementation of these recommendations.

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[9] Contracts Management: The People and the Process (Nov. 1988).

EPA has also recognized contracting weaknesses through its activities under the Federal Manager's Financial Integrity Act (FMFIA). Under this act, federal agencies must report to the Congress and President each year on the material weaknesses they have identified in their internal control systems. Although EPA has not reported contract management as one of the 16 material weaknesses it has identified during the 6 years of the act, corrective actions taken to remedy identified material internal control weaknesses have included needed improvements in contract management. For example, in fiscal year 1983 EPA reported that more detailed procedures must be developed to strengthen the implementation of the Superfund program and to ensure consistent and effective utilization of Superfund resources. To address this weakness, EPA identified six corrective actions for fiscal year 1984, two of which involved contract management. EPA implemented these actions in 1984 by (1) issuing a guidance manual on how to conduct a proper cost-effective analysis of remedial actions and (2) issuing guidance and procedures to ensure adequate documentation of expenditures. EPA also began visiting regional offices to review cost allocation and recovery procedures.

Under FMFIA, EPA offices also identify weaknesses which, although important, are not considered significant enough to warrant reporting to the Congress and President. For example, in a review of EPA's fiscal year 1988 internal reports, we identified two regional offices and three headquarters offices that reported such weaknesses in contract management. They included a need to improve financial monitoring of contracts, a need to improve surveillance of subcontracting under primary contractors, and inadequate information for evaluation of contractor performance, among others.

According to the Chief of the Management Controls Branch, contract management was one of the issues EPA discussed as a possible material weakness to be included in its fiscal year 1988

report. However, it was not listed as a material weakness because EPA was beginning to take actions on the recommendations contained in its recent contract management study. Also, the Assistant Administrator responsible for overall contract management, who initiated the study and endorsed the implementation of its recommendations, chose not to report contract management as a material weakness.

SUMMARY AND OBSERVATIONS

EPA has placed heavy reliance on contractor support in carrying out its environmental mandates. In using contractors EPA has, however, emphasized getting the job done at the expense of sound contract management practices. This approach has resulted in a number of contract management weaknesses, such as inadequate contract oversight, problems with subcontracting activities, rewarding inadequate contractor performance, heavy reliance on cost-plus-fee contracts, and improper use of sole-source contracts. Also, we believe EPA is understating its use of consultant services contracts.

Although EPA has taken steps to correct its contracting weaknesses on several occasions, recent EPA evaluations indicate these contracting weaknesses still exist. In the future, EPA's reliance on contractors will likely increase. And, should the Congress and Administration carry through with early promises to increase attention to environmental issues, EPA may have to rely on contractors even more, assuming that little or no increase in EPA staffing occurs.

To get the most effective environmental results for the dollar, we believe it is imperative that EPA develop and implement sound contract management practices. EPA's initiatives to strengthen contract management are a step in the right direction. However, we remain concerned that if EPA fails to aggressively

follow up on the implementation of these initiatives, the potential improvements in contract management that could result will be diminished.

Mr. Chairman, this concludes my prepared statement. I will be glad to respond to any questions that you or members of the Subcommittee might have.

ATTACHMENT I

ATTACHMENT I

GAO REPORTS ON EPA CONTRACTING

The Environmental Protection Agency's Use of Consultants (GAO/T-GGD-89-5, Feb. 3, 1989)

Superfund Contracts: EPA Needs To Control Contractor Costs (GAO/RCED-88-182, July 29, 1988)

Superfund: Overview of EPA's Contract Laboratory Program (GAO/RCED-88-109FS, Mar. 30, 1988)

Superfund: Cost Growth on Remedial Construction Activities (GAO/RCED-88-69, Feb. 24, 1988)

Air Pollution: EPA's Efforts To Develop a New Model for Regulating Utility Emissions (GAO/RCED-88-57, Jan. 22, 1988)

Internal Controls: EPA Needs To Improve Controls over Change Orders and Claims (GAO/RCED-88-16, Nov. 17, 1987)

Contracts: Status of EPA's Contract Management Improvement Program (GAO/RCED-87-68FS, Jan. 12, 1987)

The Environmental Protection Agency Should Better Manage Its Use of Contractors (GAO/RCED-85-12, Jan. 4, 1985)

Potential Impacts of Reducing the Environmental Protection Agency's Budget (GAO/RCED-83-75, Dec. 30, 1982)

EPA's Use of Management Support Services (CED-82-36, Mar. 9, 1982)

Agencies Should Disclose Consultants' Roles in Preparing Congressionally Mandated Reports (FPCD-80-76, Aug. 19, 1980)

ATTACHMENT II

ATTACHMENT II

EPA BUDGET

Fiscal year	Budget obligations[a]	Total contract obligations	Superfund contract obligations
	(Billions)	(Billions)	(Billions)
1984	$1.578	$0.491	$0.230
1985	1.858	0.621	0.279
1986	1.838	0.597	0.208
1987	2.198	0.999	0.522
1988	3.117	1.037	0.547
1989	3.370[b]	1.200[b]	0.655[b]

[a]Budget obligations exclude construction grants, which are given to states and others primarily for waste water treatment plant construction.

[b]Fiscal year 1989 figures are EPA estimates.

Note: Data provided by EPA.

EPA CONTRACTING ACTIVITY

ATTACHMENT III

Fiscal year	Number		
	Contracts awarded	Active contracts	Contract actions[a]
1984	588	1,482	4,530
1985	423	1,269	6,145
1986	394	1,277	6,328
1987	425	1,276	8,715
1988	375	1,246	10,912

[a]Contract actions are processed funded purchase requests, such as negotiated modifications, change orders, cost overruns, and incremental funding.

Note: Data provided by EPA.

EPA STAFFING

ATTACHMENT IV

Fiscal year	Total FTEs[a]	Number of contracting FTEs[b]
1984	11,415	192
1985	12,415	205
1986	12,892	225
1987	13,442	234
1988	14,263	286
1989	14,720[c]	309[d]

[a]An FTE is a personnel position representing the equivalent of one full-time person for one year.

[b]Contracting FTEs for fiscal years 1984 through 1987 are for EPA's three procurement operations--Research Triangle Park, North Carolina; Cincinnati, Ohio; and Washington, D.C. For fiscal years 1988 and 1989, the contracting FTEs also include the Superfund contracting officers in the regional offices under the Alternative Remedial Contract Strategy.

[c]The fiscal year 1989 figure is the FTE ceiling.

[d]The fiscal year 1989 figure is an EPA estimate.

Note: Data provided by EPA.

Mr. SIKORSKI. Thank you Mr. Hembra, Mr. Fowler and Ms. Eggart. Thank you all for your help and future help. On that last point, we are going to hear from the EPA in a few minutes. Your testimony points out that this is not a new problem, but there have been many analyses, a lot of reports, internal and by the GAO and others. There have been a lot of complaints from those who expect more from the EPA and from those who do business with the EPA.

On a number of occasions you—the General Accounting Office—have analyzed the situation, recommended actions to overcome EPA contracting weaknesses. Are you satisfied that the EPA has fixed the problems you have identified? Especially in light of the testimony we are going to receive later on from the EPA—a kind of a don't worry, be happy, yes we have had some problems but we are all on line, attitude—and these are perceptual problems that are all being taken care of by our training and education and new contract management expertise and the rest.

Mr. HEMBRA. I think the corrective actions that the Agency has taken represent a mixed bag. I think on the positive side EPA has increased its expertise through additional staffing, more training, and increased guidance being sent out to the contract staff and the project officers.

But we are still concerned, because EPA tends to spend a lot of time restudying the problem and not as much time aggressively jumping in and taking action to solve those problems. I think as a result the problems that have been identified by us over the last eight years still basically exist in the Agency.

In addition, I think a lot of EPA's actions have been what we would refer to as paper fixes, and I do not mean that in a negative sense. I think EPA has taken a look at a lot of its policies and procedures and specific guidance that has been given out, both to the contract staff and the EPA staff that is involved in the day-to-day management of the contractors, and these policies, procedures and guidance have helped.

But what we have seen, and I think its pretty clear in that EPA's own evaluations are part of the same problem, is that EPA is not following up to make sure those changes are put in place, and unless you have an aggressive follow up and periodically check on the implementation of different actions that the Agency has put into place, you are never going to be sure that they are working.

In addition to that, even if they are working, they may not necessarily be the perfect fixes. So we would continue to urge that when policies, procedures are changed, that there be periodic follow up to ensure that the right type of action is being taken.

Mr. SIKORSKI. How does that happen? You said that the EPA is heavily contractor-dependent; that the EPA is giving larger and larger contracts that tend to be even more and more difficult to manage, and that the EPA's staffing level has been fairly constant for the last five years.

You estimate that half of its staff is involved in some aspect of contracting while a third is directly involved with contract management. You can talk about reforms and you can talk about follow-up and fixes, but unless there are some resources available to do that, expectations that the EPA will do more in terms of environmental issues or live up to the things that have been dumped

on them for the last several years will pull them in the opposite direction in terms of resources.

Mr. HEMBRA. Well, I think a lot of what you see going on is fixes to identify problems. I think there comes a point in time when you have to step back and you have to ask yourself, of the things that we are doing are we doing them right, and are we doing them in an efficient and effective manner.

Just because you contract out does not eliminate the responsibility that the Agency has to make sure that you are getting efficient and effective product services through the contracting process. EPA still maintains that responsibility, and what we see happening is a situation where there appears to be a disconnect.

As EPA's most recent study pointed out, the administrator has to strongly endorse sound contract management processes, so it has to start at the top and work its way through. EPA has mechanisms in place to check to make sure that the contracts are being awarded properly; that they are being administered properly; and that there is overall sound contract management.

What perhaps needs to be done is to stop and revisit the whole issue of how they go about contracting, and make sure each of the steps they have put in place bring about an equitable balance between the timeliness issue, the quality of the product and service, and the overall cost.

Mr. SIKORSKI. I had a question reading over your testimony last night. Do we know how many contractors and subcontractors are out there?

Mr. HEMBRA. EPA knows how many contractors it has. EPA does not, to our knowledge, have a good handle on the number of subcontractors.

Mr. SIKORSKI. But some of these contracts—the two that we are going to look at and that the Inspector General has looked at—are $100 and some million each. There are a whole host of subcontractors, I assume, attached to those, we do not know how many different entities are working for the EPA.

Mr. HEMBRA. Well, once again I would say that the EPA has a handle on the number of contracts it has. EPA, to our knowledge, does not have a good handle on the number of the subcontractors involved, and there is a lot of subcontracting that goes on. The EPA relies on the prime contractor to ensure that the subcontracting is done consistent with federal procurement regulations——

Mr. SIKORSKI. The reason I ask, and maybe I am setting up the issue for discussion later on, but many people toward the end of the panels today talk about the conflicts of interest, the problems that tend to just show up in a setting of this magnitude with the numbers of subcontractors and contractors that are there.

If you do not have a handle on subcontractors, just the numbers, how do you know what those subcontractors are doing in their off contract business work? Basically, as I understand it, there is a certification process, and that is what we are relying on.

Mr. HEMBRA. Yes. In fact, GAO has just recently completed a review of conflict of interest with regard to Superfund. That product will be released shortly, based on our work for Chairman Dingell, and that information will be available to the public in about 30 days.

Mr. SIKORSKI. Under the Superfund statute, if Superfund response action contractors are unable to obtain adequate liability insurance to protect themselves against claims of negligence that could be brought against them based on their clean-up involvement. They can be indemnified for any such damages from the Superfund trust fund, which seems to indicate that there could be an unlimited liability for the fund.

Now, given EPA's reported shortage of experienced staff to supervise and evaluate the work of the contractors and our understanding that they are paying for substandard work and even awarding awards for substandard work, is it possible that substandard contractor work could go undetected, be awarded increased dollars, and then later on the government would be responsible for indemnifying contractors for damages brought by third parties caused by inadequate clean-ups?

Mr. HEMBRA. I would have to say in all honesty that the potential is there. In fact, we have just started a review of contractor indemnification. It is one of the legislative mandates placed on GAO as part of the Superfund amendments.

EPA, as part of the Superfund reauthorization, has a contractor indemnification clause. EPA can in fact indemnify the contractors. GAO has issued reports in the past that have pointed out the availability of insurance for contractors has diminished considerably, and that as a result EPA can indemnify its contractors up to and including the cost for negligence and the coverage of legal costs.

So what you are left with, at this point in time is that EPA does indemnify. EPA has had contract management problems. The number of contracts are growing. There is a technical difficulty in coming up with permanent solutions to the contamination problems at site. So I think the ingredients are there for the potential drain on Superfund.

Mr. SIKORSKI. We will never be able to pay—although we should—scientists and technical people what they can get in the private sector to work for us and the taxpayers in the federal government. But we can do better than we are doing now, and I guess the question is, would a pay differential, eliminate some of the differences that exist now between the contract work and the civil servants that are working in EPA to manage these contractors and contracts, make a difference?

Mr. HEMBRA. Well, I think it is an issue, one that we really have not looked at. Of course, we have done work and issued reports on the work force issue and Superfund, that there is a high turnover of staff, that the Agency is losing a lot of its technical scientific expertise to the private sector, and I think with the new strategy the Agency has, the ARCs contracts, where there will be more contracts awarded than they have now, that the potential exists that the drain will at least continue, if not increase.

I think there are a lot of things going on in the federal government, not just with the Environmental Protection Agency where federal agencies are complaining about losing the staff, not being able to pay them comparable salaries. I think that it is an issue that EPA should pursue.

I think there are a lot of projects going on right now within the federal government, everything from pay differentials to other

means of increasing the compensation of the federal employees, and I think that it is something that EPA should be pursuing with OPM and OMB.

Mr. SIKORSKI. I agree. One last question. I hear this from people repeatedly. They want to stay in EPA. They want to do the work, even though they are going to make sacrifices for themselves and their families.

They want to stay there, but there is a limit to the sacrifice that they are willing to make, and also a problem with people who've been there less, less talented for example, who can revolve back through the door and come back in a contractor position at multiples of what the more experienced people in the Agency are getting.

In the Superfund area, and you just triggered a question there, and this is my last question: the Superfund area constitutes a large portion of the contracting out activities. EPA has touted its alternative remedial contract strategy, the ARCs program, as a panacea for their contracting ailments. Will implementation of this strategy really help?

Mr. HEMBRA. Well, I think there are some up sides and some down sides to the use of ARCs, and EPA of course has hit on the potential to increase competition because you will be awarding more contracts. You should also get your contract expertise closer to where the action is. Because you will be moving contracting officers out to the regions, there is potential for more timely action, if for no other reason that your contracting decisions will be made closer to where the work is being done.

But I think EPA also has to recognize and compensate for the potential drawbacks associated with this new strategy. For example, EPA is going to be managing even more contracts. If you are having contract management problems now, those problems can only increase unless they pay very close attention and get their house in order.

I think it is interesting that this approach also has the potential of really helping the private sector, because you may see more businesses coming on. I think all you have to do is read the newspaper and you will see that environmental clean-up is becoming a big business. That, in and of itself, has the potential of even drawing more staff away from EPA. It has been recognized that EPA in a lot of cases has become a training ground for the contracting firms that do environmental work. So the potential is there, I think, with this new strategy.

I think what all of this says is that while the benefits are there to be derived from ARCs, that the Agency has to pay a lot of attention to two things: 1) sound contract management practices; and 2) preparing themselves for the possibility that they may have more staff leaving the Agency.

We do not know that for a fact, but I think you can put certain pieces together and you begin to see a picture forming that the potential is there for more technical and scientific expertise to depart from the Agency unless the Agency is successful in doing something in the way of compensation to keep those employees in-house.

Mr. SIKORSKI. Good. So what we have learned that you have done three studies this year and last year.

Mr. HEMBRA. Yes.

Mr. SIKORSKI. Three studies, and three reports on Superfund contracts, one on cost growth, one on remedial construction, and we know that they are contractor dependent, emphasizing speed and flexibility at the expense of quality management. That there are serious difficulties in contractor management oversight especially in oversight of subcontractors and the award-fee system has been identified.

Your key report, showing that EPA needs to control contractors' costs, basically found that EPA did not challenge increased costs resulting from inadequate contractor performance. They awarded substantial performance-based fees to contractors with less than satisfactory performance and they had limited success in establishing an acceptable subcontracting management award system. Is that a fair summary?

Mr. HEMBRA. That is pretty good.

Mr. SIKORSKI. Thank you all. Our next panel consists of Mr. John Martin, who is the Inspector General at the Environmental Protection Agency. The subcommittee really thanks you for doing your work and appreciates your coming today, the people from GAO and the people from the EPA as well.

The EPA Inspector General's Office was established by the Inspector General Act of 1978. Mr. Martin has served as EPA IG since October 1983. He is accompanied by Mr. Ernest Bradley, III, who is the Assistant IG for Audits, and—who is the other person?

Mr. MARTIN. Kenneth Konz, who is Mr. Bradley's deputy.

Mr. SIKORSKI. Welcome, gentlemen. Thank you for your willingness to come here and assist us in providing testimony on some analyses that you have conducted, that heretofore have not been publicized. You have your time. Your entire statement will be placed in the record as you have submitted it, and you can use your time to summarize or highlight as you wish.

STATEMENT OF JOHN C. MARTIN, INSPECTOR GENERAL, U.S. ENVIRONMENTAL PROTECTION AGENCY, ACCOMPANIED BY ERNEST BRADLEY, ASSISTANT INSPECTOR GENERAL FOR AUDITS, AND KENNETH KONZ, DEPUTY ASSISTANT INSPECTOR GENERAL FOR AUDITS

Mr. MARTIN. Thank you, Mr. Chairman. I am pleased to have the opportunity to be here to discuss three of the recent audits that our office has conducted of EPA's contracts. The first two audits deal with the Superfund program, and the last deals with contracting activities supporting the Resource Conservation and Recovery Act, which is the RCRA program.

First I would like to talk about our audit report on the management of the technical assistance team for TAT services contract. This report was issued by us on September 28 of 1988. The purpose of the audit was to evaluate how effectively EPA Region 3 managed the TAT contract.

The contract provides that a specified number of TAT members be dedicated to projects within each region. The cadre of TAT members are comprised of a multidisciplined technical staff, con-

sisting of ground water hydrologists, geologists, chemists, and environmental scientists.

During emergency response clean-ups, these contractor personnel provide technical and management support to EPA's on-scene coordinators. For example, this includes completing pollution reports, damage assessments, and procuring laboratory analyses. This cost-plus-award-fee contract was awarded December of 1986 and during calendar year 1987 Region 3 expended about $3 million for technical-level personnel.

We found two major problem areas with Region 3's utilization of the contractor technical personnel. The first concerned use of highly qualified technical people to do administrative and clerical work. For example, during that calendar year approximately 6,100 hours of nontechnical administrative work, which cost about $187,000, was provided by contractor engineers, scientists and geologists.

These personnel performed such tasks as file organization, referencing, indexing and working in the regional response center. One geologist worked at the response center a total of 676 hours performing administrative duties.

He informed us that he worked at the response center for approximately nine months, both under the previous and current contracts. Some of the tasks he performed including filing reports, answering the phone, updating lists and maintaining charts for the regional deputy project officer.

Region 3 employees stated that the use of TAT personnel for administrative support duties was due to a lack of EPA personnel available to perform the tasks. We believe that utilization of professional level staff to work on more critical assignments would be a more efficient use of these resources.

For example, although prompt preparation of on-scene coordinator's reports which document all aspects of a removal action is essential, we found that it took an average of over eight months to complete these reports after the work order was issued.

The second area concerns contractor personnel being utilized for personal services. Personal services are those where the contractor personnel seemingly act as employees of EPA, or EPA maintains the right to direct, supervise, or define the work to be performed. Federal regulations prohibit this type of contract.

During our review we identified 10 work orders which authorized contractor personnel to perform administrative tasks in the response center. We observed contractor personnel furnishing routine administrative services in an EPA office, under EPA supervision, while using EPA equipment and working alongside EPA staff. Interviews with TAT personnel confirmed that administrative duties were performed in the response center under EPA supervision.

Additionally, Region 3 needs to improve its monitoring of contractors' performance. The EPA deputy project officer is responsible for monitoring the contractor's work. This monitoring is necessary to ensure that the contractor is performing assigned tasks in a satisfactory manner. We found the deputy project officer did not ensure that reports were accurate and useful, and did not determine the accuracy of the contractor's invoices.

Region 3 also needs to improve its technical direction of the contractor. We found that work orders were not adequately prepared, nor processed on a timely basis. For example, many work orders did not contain realistic estimates of hours and costs, and did not provide sufficient detail to accurately reflect the work required.

Finally, we noted that the region did not always provide substantive comments to support the ratings given to the contractor, which are the basis for distributing award fees. Also, the contractor did not always provide personnel who possessed the necessary education and experience as required by the contract.

We made recommendations for corrective action to both Region 3 and to the Office of Emergency and Remedial Response. The Agency agreed to correct the conditions cited in the report, although the Agency did not agree that TAT personnel were used inefficiently or for personal services.

However, to eliminate the appearance that these situations were occurring, the Region agreed to eliminate the use of TAT personnel in the response center and replace them with clerical personnel from the American Association of Retired Persons. We believe that this action supports our position that much of the work performed by the TAT personnel in the response center was administrative or clerical.

We also audited EPA's utilization of field investigation teams, or FIT teams, in Regions 1, 2, 3 and 4. The FITs performed basic preremedial investigation activities, such as preliminary assessments and sight inspections at hazardous waste sites. In return, EPA paid 100 percent of contractor costs plus fees. The total estimated value of the five year contract is $125 million.

The audit report discussed the need for more effective EPA management. The project officer in headquarters had overall responsibility for managing and directing FIT activities. However, in reality, the regions were virtually autonomous. This enabled Region 1 to adopt a sight inspection philosophy that differed from the other three regions. As a result, the contractor reviewed files rather than visiting the sites and taking samples.

This new philosophy caused serious problems for contractor personnel, who resorted to performing mock exercises to maintain their site inspection expertise. Resignations and transfers to a non-EPA project at the end of the first year led to a 41 percent reduction in the FIT professional staff level.

The Agency's educational investment in these employees was substantial. They had attended in total 176 training courses funded by EPA. After the exodus of FIT professional staff we noted that a subsequent evaluation showed that performance had declined. Ultimately, because headquarters convinced Region 1 to assign field work, because of a lack of oversight by EPA headquarters it took almost a year to do this.

EPA headquarters also delayed taking aggressive corrective action in Region 2. Problems that had surfaced in the regional project officer's initial evaluation of the contractor were allowed to persist for almost a year. The regional project officer's evaluations reported she usually had to prod the contractor's office manager, who appeared to provide nothing more than lip service.

Writing quality and technical accuracy continued on a downward slide. Paperwork supporting samples became shoddy, and the necessity to revise major portions of the preremedial reports placed a tremendous editorial burden on the EPA staff.

The primary mission of the FIT was to conduct field investigations such as preliminary assessments and site inspections. The reauthorization of Superfund tasked EPA to complete selected preliminary assessments and site inspections by specific dates.

After a detailed analysis, the Agency concluded that it could not complete all the projects on time. We believe one reason the Agency could not complete the mandated tasks was that the contractor was allowed to spend excessive hours on support activities such as training, equipment maintenance and FIT office management, which included coordination with the regions.

EPA's original goal for support activities during the first year of the contract was 30 percent of FIT professional hours. However, all four FIT offices exceeded this percentage, and one office actually spent over half its time on support activities. In total, the contractor charged over 200,000 hours to support. This represented almost 41 percent of the 492,000 FIT hours. We estimated the excess support costs to EPA at $1.6 million.

EPA also needs to improve implementation of the award or incentive fee process. These award fees are used to encourage good performance by the contractor. We concluded that award fees were over-generous, and were sometimes awarded for deficient work.

For example, the contractor received incentive fees of over $90,000 for their work in Region 1, despite performing little actual field work and charging over half its time to support. Also, the contractor received over $120,000 as incentive fees for their work in Region 2, even though the regional project officer seriously questioned contractor performance. On top of this, the agency gave the contractor's program management office incentive fees of $149,000, which equates to outstanding performance.

It appears unreasonable that EPA allowed the adverse situations in Regions 1 and 2 to persist for almost a year, while still awarding outstanding incentive fees. Consequently, we believe that EPA headquarters should have exercised more aggressive action and focused the FIT officers on their primary mission, which is the preremedial program.

The Agency disagrees with how the audit report depicts the management and performance of the FIT contract. However, to date they have not provided any additional information to demonstrate that our facts and conclusions were not valid.

The last audit I want to discuss involves the management of contracts supporting the Office of Solid Waste. I would like to point out that we were asked by the Office of Administration and Resource Management to do this audit. They expressed concern that systemic problems existed in the management of RCRA contracts. They requested our assistance in identifying and resolving these problems.

During the audit we found that Agency technical personnel were directing contractors to perform work before it was properly ordered or funded by the contracting officer. This happened in almost one-third of the 43 contract actions we randomly selected for

review. In one instance, a contractor even performed work before a contract had been awarded. These contractors incurred approximately $500,000 in unauthorized costs.

Next, we identified a need for improving the Agency's subcontracting activities. Agency personnel and contractors were not complying with the federal acquisition regulations concerning subcontracting. We found that prime contractors were not competitively selecting subs, and also that Agency personnel were selecting and directing the work of subcontractors.

The procedures used to select subcontractors did not ensure that the Agency was receiving the best quality products and service at the lowest price. The noncompetitive selection of subcontractors by Agency personnel improperly infringes on the authority and responsibility of prime contractors, and increases the potential for and the appearance of possible wrongdoing and conflicts of interest on the part of EPA employees.

In addition, when EPA personnel selected and directed a subcontractors work, the Agency paid prime contractors' administrative costs for overseeing the subcontractors work without receiving any value for these added costs.

Lastly, we found that Agency personnel were not adequately monitoring contractors' work. Information submitted by contractors was either not reviewed, or not reviewed in a timely manner.

Monitoring of these contracts is extremely important, because under the terms of the contracts, a contractor is only responsible for making a good faith effort to complete the work at an estimated cost. Therefore, the government may be responsible for full payment even if the final product is unsatisfactory or exceeds the estimated cost.

For example, under one of the work assignments we reviewed, the contractor was to develop an inspector's manual. When the Agency received the draft manual it was found to be unacceptable and the work on the manual was terminated.

Although work was halted, the Agency still had to pay the contractor $40,000 for a product the Agency could not use. Better monitoring of the contractor's on-going work could have prevented this from occurring.

In our audit report, scheduled to be issued next month, we are making a number of recommendations aimed at improving the Agency's management of contracts. Agency personnel agree with our findings, and where they have not already implemented our recommendations they have indicated that they will do so as quickly as possible.

So to summarize, the audits we have conducted of EPA's management of the Superfund and RCRA contracts have shown a need for greater Agency oversight to help ensure that we are getting the best return for our contract dollars. We will continue performing audits in this area and to work with Agency management toward this goal.

This concludes my statement, Mr. Chairman. I would happy to answer any questions you have.

[The statement of Mr. John C. Martin follows:]

TESTIMONY OF
JOHN C. MARTIN
INSPECTOR GENERAL
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON HUMAN RESOURCES
OF THE
POST OFFICE AND CIVIL SERVICE COMMITTEE
UNITED STATES HOUSE OF REPRESENTATIVES

FEBRUARY 23, 1989

Good morning, Mr. Chairman and members of the subcommittee. I am pleased to have the opportunity to discuss some of the recent audits that the Office of Inspector General has conducted of EPA's contracts. I am here today to discuss three of our audits. The first two deal with the Superfund program. The last deals with contracting activities supporting the Resources Conservation and Recovery Act or the RCRA program.

TECHNICAL ASSISTANCE TEAM SERVICES CONTRACT

In order to provide technical support for EPA's emergency response programs, the Agency awarded a Cost-Plus-Award Fee contract in December 1986. This contract is entitled "Technical Assistance Teams (TAT) for Emergency Response, Removal and Prevention (Zone I encompassing Regions 1 through 5)" and is for a base period of two years with a two year option. This contract has a potential value of $120 million. The contract provides

that a specified number of TAT members be dedicated to projects within each applicable Region.

The purpose of the audit was to evaluate how effectively EPA Region 3 managed the TAT contract. Within Region 3 the contractor provided about 45 professional TAT members to support the Region's capability to adequately respond to environmental emergencies. The cadre of TAT members are comprised of a multi-disciplined technical staff consisting of groundwater hydrologists, toxicologists, chemists, and environmental scientists. As of December 31, 1987, the contractor had billed the Agency $15.5 million for services performed of which $3 million was applicable to Region 3 technical personnel.

We found that improvement was needed to ensure that professional contractor personnel were efficiently utilized to perform essential tasks. During calendar year 1987 approximately 6,100 hours of administrative type work costing about $187,000 were provided by TAT staff such as engineers, scientists and geologists. These personnel performed such tasks as file organization, referencing, indexing and working in the Regional Response Center. We believe these contractor personnel should be utilized more efficiently to perform higher priority tasks which are in the TAT members' field of expertise and in conformance with the requirements of the contract. Region 3 personnel stated that the use of TAT personnel for administrative support

duties was due to a lack of EPA personnel available to perform these tasks.

The principal mechanism for directing the contractor is by issuing a technical direction document or work order. In one case, a work order was issued for administrative support at the Response Center and a total of 3,118 hours were charged by technical personnel as of December 31, 1987. One of the contractor personnel, a geologist, charged 676 hours of his time to this work order. The geologist informed us that he worked at the Response Center for approximately nine months under both the previous and current contracts. Some of the tasks he performed included: filing reports, answering the phone, updating lists, and maintaining charts for the Regional Deputy Project Officer. Tasks also included organizing and continuously updating and categorizing reference material. Other technical TAT members charging this work order and performing similar duties included several scientists who charged over 500 hours to this assignment.

We believe that the expertise of the technical staff could have been better utilized to perform more essential tasks. For example, we evaluated the time delay in issuing on-scene-coordinator (OSC) reports. We reviewed the 26 work orders issued during January 1987 to prepare reports and found that it took an average of 257 days between the date the work order was issued and completion of the report. In four cases, the report was

completed 362 days after issuance of the work order. In most instances, the original due dates were extended to allow for completion of the reports at later dates. We found that an average of only 80 hours was spent by TAT personnel in actually preparing the 26 OSC reports, yet it took an average of over eight months to complete them. Thus, it appears that the issuance of these reports was unduly delayed while TAT personnel were assigned to administrative duties. Utilization of professional level staff to work on more critical assignments, such as OSC reports, would be a more efficient use of resources. Detailed documentation and reporting on all aspects of the removal action is essential. The OSC report is critical in this process and should be completed promptly upon conclusion of the removal action. EPA regulations provide, that within 60 days after the conclusion of a major discharge, the OSC shall submit a complete report on the response operation and the actions taken.

The Region disagreed with our report stating that TAT personnel were not used inefficiently. It was emphasized that maintaining good records is within the contract's scope-of-work. However, to eliminate the appearance that TAT personnel were performing administrative or clerical work, the Region is phasing out the use of TAT personnel working in the Response Center. The Region will utilize clerical personnel from the American Association of Retired Persons to replace the TAT members.

We found that Region 3 directed professional level contractor personnel to work in the Response Center, under EPA supervision, doing routine administrative tasks, which made them appear to be EPA employees. According to the Federal Acquisition Regulations (FAR), personal services occur when contractor personnel appear, in effect, to be Government employees. These regulations characterize a personal services contract by the employer-employee relationship it creates between the Government and the contractor. EPA is normally required to obtain its employees by direct hire under competitive appointment procedures required by civil service laws. Obtaining personal services by contract, rather than by direct hire, circumvents these laws.

We identified ten technical direction documents issued during calendar year 1987 which authorized contractor personnel to perform administrative tasks in the Response Center. During our review we observed contractor personnel furnishing routine, administrative services in an EPA office under EPA supervision, while using EPA equipment and working alongside EPA staff. Under one work order for example, the Deputy Project Officer authorized contractor personnel to provide services in the Response Center which included such vague task descriptions as organizing and reviewing files, providing logistics support and administrative assistance. Based on the contractor's financial records, we were able to identify 20 contractor personnel who

charged 3,129 hours to this work order. We interviewed eight of these 20 contractor personnel. Of the eight contractor personnel interviewed, five (62.5%) informed us that they were supervised by EPA staff while providing administrative services.

In order to prevent the use of contractor personnel for personal services, it is imperative that work statements be clearly defined setting forth exactly what the Government wants done. These statements must provide all the specifications or instructions the contractor needs, both to undertake and to complete the assignment so that further continuous direction is unnecessary.

Region 3 officials informed us that due to a shortage of EPA administrative support personnel, they used contractor staff to assist in the operations of the Response Center. We believe that the use of contractor personnel to work in the Response Center performing administrative tasks under the direct supervision of EPA, constituted prohibited personal services.

The Region disagreed that the contract was improperly used to procure personal services. However, to eliminate the impression that personal services were performed, the Region has discontinued the use of TAT personnel in the Response Center and is replacing them with retired persons.

We also found that Region 3 needs to improve its monitoring of the contractor's performance. The primary responsibility for monitoring the contractor's performance is that of the Deputy Project Officer. However, we found that the Deputy Project Officer did not: (1) ensure that required management reports were accurate and useful, (2) maintain a current log showing the status of work orders, (3) conduct Regional contractor office reviews as required by EPA guidance, and (4) determine the accuracy of the contractor's invoices. In order to ensure that the contractor is progressing satisfactorily in implementing assigned tasks and in meeting planned financial and programmatic objectives, it is necessary for EPA to regularly monitor contractor performance. Adequate monitoring would also assist in an early identification and prevention of potential problems that otherwise may adversely affect the smooth operation and implementation of the program.

We made recommendations for corrective action to both Region 3 and to the Office of Emergency and Remedial Response. They agreed to take corrective action except that the Region stated that contractor office reviews are conducted although not always documented. We reiterated to the Region that reviews must be conducted and documented to show the results of the review.

Region 3 needs to improve its management of the contractor. The work order should provide the contractor with a clear

understanding of the services that are required. In our review of the administration of work orders we found several problems which included: (1) inadequate preparation, (2) delayed processing, and (3) insufficient direction. For example, many work orders were delayed in being issued, did not contain realistic priorities or estimates of hours and costs, and did not provide sufficient detail to accurately reflect the direction given or the work authorized. The absence of clear, complete work authorizations, impedes efficient management of the contractor by the Region. Also, EPA may not be in a position to hold the contractor accountable or establish a record of the tasks it directed the contractor to perform. The Region agreed to correct the conditions cited in the report.

Finally, we noted that the Region did not always provide substantive comments to support the ratings given to the contractor which are the basis for distributing award fees. Also, the contractor did not always provide personnel who possessed the necessary education and experience as required by the contract. Both the Region and Office of Emergency and Remedial Response agreed to the take corrective action concerning these issues.

The results of our audit identified a number of weaknesses in the management of the TAT program. This occurred in part because in Region 3, the Deputy Project Officer for the TAT

contract also functions as the Deputy Project Officer for the Emergency Response Cleanup Services contract. He is responsible for millions of dollars of contracted work each year. Also, he has additional responsibilities including functioning as the Regional Safety Officer and as an OSC. We recommended the appointment of a full-time Deputy Project Officer and the Agency agreed with this recommendation.

FIELD INVESTIGATION TEAM CONTRACT

During fiscal year 1988, we also performed an audit on EPA's utilization of the Zone I Field Investigation Team (FIT). The contractor provides the personnel, materials and equipment needed to complete basic pre-remedial investigation activities such as preliminary assessments and site inspections at uncontrolled hazardous substance disposal sites. In return EPA pays 100 percent of contractor costs, plus a base fee, plus an award fee if applicable. These payments amounted to $15.7 million during the first year. At the time of our review it was anticipated that over a five year period EPA would pay a total of $125 million.

The purpose of this audit was to evaluate the Agency's policies and procedures for using the FIT in Zone I, which encompasses EPA Regions 1, 2, 3 and 4. The audit evaluated

FIT operations from the award of the contract on November 1, 1986 through December 31, 1987.

The first finding in the audit report discussed the need for EPA Headquarters to exercise more effective managerial oversight. The EPA project officer in Headquarters had overall responsibility for managing and directing FIT activities. However, in reality the EPA regional offices were virtually autonomous. Also, turnover among key EPA and contractor personnel was widespread. Over a 17-month period there had been six EPA contracting officers, four EPA contract specialists and changeover of half the EPA regional project officers and FIT office managers. Moveover during this period, there was no formal written guidance concerning the pre-remedial program except for the National Contingency Plan. Because the regions were free to interpret the National Contingency Plan as they pleased, there were four diverse regional programs, rather than a single uniform FIT program.

The effects of EPA's lack of centralized oversight of this contractor were made worse because EPA Headquarters delayed taking action to correct problems in Regions 1 and 2 for almost a year. For example, a morale problem arose almost immediately in the contractor's Region 1 office after the signing of the new contract. Region 1 adopted a new philosophy for performing site inspections that differed from the rest of the zone. This new

site inspection philosophy of Region 1 did not require field visits and taking site samples. Contractor status reports and EPA performance evaluation reports indicated that this lack of field work caused serious problems for contractor personnel.

The FIT office manager and senior project manager resigned at the end of the first year of the contract. The contractor then allowed other staff to transfer to a satellite office and work on a state contract recently awarded. The net effect of these actions was a 41 percent reduction in the contractor's professional level staff, and a loss of over half its top managers. Furthermore, EPA had a significant educational investment in the professional employees who left as they had attended an aggregate of 176 training courses funded by EPA. After the exodus of the FIT staff we noted that EPA's evaluation of the contractor indicated that performance had declined.

The EPA Headquarters project officer was able to convince Region 1 that FIT personnel should be performing on-site field work, but it took almost a year. As a result, except for "mock exercises" to maintain field sampling expertise, the FIT spent most of the first year of the contract in the office. The situation described above is an indication of EPA's lack of managerial oversight concerning this contract. The frequent turnover of contracting officers obviously affected EPA's control over the contractor.

The initial performance evaluation by EPA's Region 2 project officer surfaced problems with that FIT. This situation also persisted for almost a year because EPA Headquarter's again delayed taking aggressive action. In her initial performance evaluation, the regional project officer indicated that she had to prod the FIT office for information, and that the FIT's mobilization and training effort got off to a relatively slow start. In her second performance evaluation, the regional project officer noted that:

> ... there continues to be a problem with who is briefing whom. The EPA regional project officer should not have to prod the FIT Team Leader for information on routine as well as high priority activities. It appears the FIT Team Leader is merely providing EPA with nothing more than lip service. Obviously, there are still some serious deficiencies in the area of communications which need improvement.

In her third performance evaluation, the regional project officer stated in part that:

> The quality of FIT deliverables has been suffering. FIT continues to demonstrate a downward slide in their quality of writing and

technical accuracy as discussed in a number of the attached performance evaluation reports. Major portions of preliminary assessments, site inspections, and expanded site inspection workplans were poorly written, contained conflicting statements, and often were confusing and difficult to read. This poor performance has placed a tremendous burden on EPA staff to act as technical writers/editors in order to obtain reports consistent with EPA standards. For the first time since the inception of the FIT, the paperwork which accompanies samples collected in the field has become shoddy. For example, forms for controlling samples were improperly filled out and on occasion have not been sent to the lab with the samples to be analyzed. All of these issues have been repeatedly discussed with the FIT office manager in great detail but performance continues to decline.

As a result FIT 2 received a less than satisfactory rating, but still received $30,913 in award fees. It should be pointed out that during the three performance evaluation periods FIT 2 worked 116,595 hours, for which EPA reimbursed costs of $3,883,659, plus base fees of $116,510, and additional award fees of $121,579.

As you can see from our reviews, adverse situations persisted in both Regions for almost a year before effective

corrective action was taken. We feel that these problems should have been resolved in a more timely fashion by the EPA project officer in Headquarters. To allow these situations to exist for that length of time while expending millions of dollars to obtain FIT services does not seem reasonable. It is especially perplexing that award fees intended to reward good performance were also paid to FIT 2. For this reason we recommended that EPA Headquarters exercise more aggressive control over FIT operations.

EPA also needs to improve implementation of the award fee process in order to better assess the adequacy of the work performed by the contractor. We reviewed performance packages submitted for EPA evaluation over the first year of the contract and found that the rating packages generally covered the minimum number of hours required for evaluation by EPA only by including large amounts of support tasks such as program management and equipment maintenance.

We also found that ratings were overgenerous and the contractor was paid award fees for deficient work, as well as for work that was beyond the scope of the pre-remedial program. For example, as previously discussed FIT 1 received award fees of over $90,000 despite the fact that the FIT charged over half its time to support tasks, did not perform field work, and transferred a large segment of the supposedly "dedicated" team to

work on a state contract. FIT 2 received over $120,000 in award fees despite the fact that the regional project officer seriously questioned the FIT office manager's competency during most of the year. Even more confusing was EPA Headquarters' response to these situations. Rather than criticize or penalize the contractor, the Agency awarded the contractor's Program Management Office fees of $149,000, which using EPA evaluation criteria equated to outstanding performance.

The primary mission of the FIT was to conduct field investigations such as preliminary assessments and site inspections. The enactment of the Superfund Amendments and Reauthorization Act on October 17, 1986 modified certain portions of the pre-remedial program. Basically, EPA was required to complete selected preliminary assessments by January 1, 1988; site inspections by January 1, 1989; and Hazard Ranking System scores by October 17, 1990. After a detailed analysis, the Agency concluded that it could not complete all the site inspections, or the Hazard Ranking System scores required by the Act. We believe one reason the Agency could not complete the mandated tasks was that the FIT offices were allowed to spend less that half their time on their primary mission.

Most of the charges for non-primary mission work related to support activities such as training, equipment maintenance, FIT office management, general technical assistance, and quality

assurance. We concluded that some of the projects were of questionable value to the Government, and that EPA should redirect the focus of the FIT offices to their primary mission, the pre-remedial program.

EPA's original goal for support activities during the first year of the contract was 30 percent of FIT professional hours. We found the FIT exceeded this percentage with over 200,000 hours being spent on support activities which equated to almost 41 percent of the total FIT hours charged. All of the individual FIT offices exceeded the support goal, and one office actually charged over half its time to support activities. We estimated the excess support cost EPA $1.6 million.

In addition to our review concerning the amount of hours charged for support, we also evaluated the services received. For example, we estimated that during the period of our review the contractor charged EPA more than $1.1 million dollars for training. We believe the number of hours charged was excessive, and in some cases wasteful. Furthermore, the records were inadequate to indicate what was received. For example, one FIT office received 17 technical directive documents for program management. These documents are similar to work orders. One of these directives authorized 3,200 hours for general management by the office manager and assistants during fiscal year 1987. This project was closed out at 3,835 hours without the required

amendment or comment by EPA personnel. The project file contained nothing more than items such as, evaluation reports, letters to schools, records of interviews and records of conversations with EPA personnel. The file did not contain adequate documentation to show what was actually accomplished. The fiscal year 1988 replacement technical directive document increased the authorization to 5,000 hours.

Another technical directive document authorized 2,500 hours for ad hoc services. The contractor's accounting records indicated that 1,067 hours had been charged under this technical directive, however, the file contained nothing to explain what services were provided. A second directive authorized another 2,500 hours and contractor records indicated that 1,214 had been charged. The only substantive work we could find accomplished under this directive was the receipt of new congressional district maps for New York and New Jersey.

Based on this review we concluded that better utilization of the Zone I FIT offices was warranted, and that more of the FITs' efforts should be expended on the pre-remedial program, which is the primary reason the contract was awarded.

The Agency's response to this audit indicated disagreement with numerous issues. We continue to have differences of opinion about program policy and operations, as well as contractual

requirements. The Agency disagrees with how the audit report depicts the management and performance of the Zone I FIT contract. The Agency contends many problems were presented erroneously or out of context. However, to date they have not provided any additional information to demonstrate that our facts and conclusions were not valid.

RCRA CONTRACTING

We recently completed an audit of EPA's management of contracts supporting the Office of Solid Waste (OSW). We performed this audit at the request of the Office of Administration and Resources Management. The results of a review performed by that office indicated problems existed in OSW's management of contracts. The purpose of our audit was to assist in identifying and resolving systemic problems associated with the management of OSW support contracts. We issued a draft audit report to the Assistant Administrators for Administration and Resources Management and for Solid Waste and Emergency Response on December 19, 1989. We are currently evaluating the Agency's formal written response to our draft report.

OSW is responsible for developing regulations pursuant to the Resource Conservation and Recovery Act and for implementing the national program to regulate hazardous waste. During fiscal 1987, the year we audited, about $35 million was spent to acquire

contractor services to carry out this legislative mandate. The services acquired consisted mostly of preparation of reports and studies.

The contracts utilized by OSW are mission contracts with broad statements of work. Under these contracts, work is ordered by issuing work assignments to contractors that outline the specific tasks they are to perform. For their services, contractors are paid 100 percent of their costs, plus a base fee and an award fee, if applicable.

During this audit we evaluated the procedures for (1) ordering work, (2) monitoring contractors' performance, (3) utilizing subcontractors, and (4) determining award fees. We also determined whether the Agency had taken corrective actions on previously reported GAO and Office of Inspector General findings related to EPA's administration of contracts. We found that although EPA has increased its contract management resources and improved its contract management procedures in response to these reports, many of the previously reported problems were still occurring and further improvements were needed. For example, Agency personnel were not always ensuring that: only required work was ordered; contractors were assigning the appropriate personnel to perform the work; the cost of the work performed was reasonable; and competition was utilized to the

maximum extent possible. The following paragraphs discuss in detail our findings related to the management of CBW contracts.

First, we found that Agency technical personnel were directing contractors to perform work before it was properly ordered or funded by the contracting officer. This happened in 13 of 43, or almost one third, of the contract actions we randomly selected for review. In one instance, a contractor even performed work before a contract had been awarded. These contractors incurred approximately a half million dollars in unauthorized costs. Agency personnel responsible for overseeing contractors' work usually paid the contractors for unauthorized work. As a result, contractors continued to perform work requested by Agency technical personnel, even if the work had not been ordered by a contracting officer.

Next, we identified a need for improving the Agency's subcontracting activities. Agency personnel and contractors were not complying with the Federal Acquisition Regulations concerning subcontracting. We found that prime contractors were not competitively selecting subcontractors. Also, Agency personnel were selecting and directing the work of subcontractors. The procedures used to select subcontractors did not ensure that the Agency was receiving the best quality products and services at the lowest price. The noncompetitive selection of subcontractors by Agency personnel improperly infringes on the authority and

responsibility of prime contractors and increases the potential for and appearance of possible wrong doing and conflicts of interest on the part of EPA employees. In addition, when Agency personnel select and direct subcontractors' work, the Agency pays the prime contractors administrative costs for overseeing the subcontractors' work, but it is difficult to hold these prime contractors responsible for either the quality or cost of the work.

Lastly, we found that Agency personnel were not adequately monitoring contractors' work. Monitoring of these contracts is extremely important because, under the terms of the contracts, a contractor is only responsible for making a good faith effort to complete the work at an estimated cost. Therefore, the government may be responsible for full payment even if the final product is unsatisfactory or exceeds the estimated cost. For example, under one of the work assignments we reviewed, the contractor was to develop an inspector's manual. When the Agency received the draft manual, it was found to be unacceptable and work on the manual was terminated. Although work on the manual was halted, the Agency still had to pay the contractor $40,000 for a product that the Agency could not use. Better monitoring of the contractor's ongoing work could have prevented this from occurring.

The Agency has developed a number of procedures designed to control the quality and cost of contractors' work. Under the terms of the contracts, contractors were required to submit monthly status reports and invoices outlining the work performed and its cost. We found that often the reports submitted by the contractors did not provide sufficient information to monitor contractors' costs. The information that contractors provided was not adequately reviewed by Agency personnel. In addition, monitoring of the contractors' work was made extremely difficult by the Agency's practice of transferring work on projects between work assignments and contracts. In our sample of 43 contract actions, work on 11 (26 percent) had been transferred either between contracts or work assignments. Therefore, to compare costs incurred by the contractor with the products or services provided, Agency personnel would have had to review invoices and status reports for several contract actions. There was no procedure in place to require such a comparison when multiple contract actions were involved.

Another key control the Agency developed to monitor the quality and cost of contractors' work was the requirement for the contractors to submit work plans outlining their proposed staffing and estimated cost for each work assignment. We found that the Agency often did not approve contractors' work plans until a substantial portion of the work had been completed. On nine of our 36 sample work assignments, the Agency took over

three months to approve the contractors' work plans. Meanwhile, contractors incurred an estimated $800,000, or 57 percent, of the estimated cost of $1.4 million for the work assignments. If the Agency had later found the contractors' work plans to be unacceptable, the Agency would probably have had to pay contractors for the costs they had already incurred even if the work performed was of no value to the Agency.

The award fee provisions in the contracts also were not effectively used to control the quality and cost of contractors' work. For the four cost plus award fee contracts in our sample, contractors were paid about $525,000 in award fees during fiscal 1987. The payment of these award fees at stated intervals during the life of the contracts was intended to motivate contractors to improve poor performance or continue satisfactory performance. However, due to the low priority placed on making award fee decisions, contractors were not informed of the Agency's award fee decision until an average of six months after the end of the evaluation period. Thus, the Agency was paying contractors award fees without receiving the full benefit they could provide in motivating contractors' future performance.

The program office personnel responsible for monitoring contractors' work lacked the necessary training to effectively perform these duties. Sixteen of the 43 people we interviewed, or over one third, had not attended the Agency required contract

management training. Those that had attended the training indicated that it did not adequately address the contract management duties they were required to perform. This lack of training contributed to the inadequacies in EPA's contracting system that have just been discussed.

In our final audit report, we will be making a number of recommendations aimed at improving the Agency's management of contracts. Agency personnel have told us that they generally agree with our findings, and where they have not already implemented our recommendations they will do so as quickly as possible.

SUMMARY

The audits we have conducted of EPA's management of Superfund and RCRA contracts have shown a need for greater Agency oversight to help ensure we are getting the best return on our contract dollar. We will continue performing audits of this area and work with Agency management toward this goal.

This concludes my statement. I will be pleased to respond to any questions you may have.

Mr. SIKORSKI. I thank all of you for your hard work and your assistance. Let me kind of go through this so that I am halfway, or at least part way, towards where you are.

You have been focusing in two of your most recent audits completed in September of '88, first the Technical Assistance Team or TAT contract, and as I understand it they are using the Superfund program to provide technical support for emergency response programs. This is a quick response to environmental emergencies, where there is a discharge or release of hazardous waste.

Mr. MARTIN. That is correct.

Mr. SIKORSKI. These teams usually consist of 45 or so technical people who are hydrologists or toxicologists, chemists, and environmental engineers. Is that correct?

Mr. MARTIN. Yes, that is correct.

Mr. SIKORSKI. And the contract you looked at was a cost-plus-award-fee contract issued to the Roy F. Weston, Inc., it was in Region 3, and it had the potential value of $120 million.

Mr. MARTIN. Yes.

Mr. SIKORSKI. And as I understand these cost-plus-award-fees you get the cost, plus a certain amount for profit or whatever, and then there is an award fee there for above-standard work performed. A performance fee.

Mr. MARTIN. Well, there is an award fee. Part of the problem is, they do not necessarily have to do above-standard work to get the fee.

Mr. SIKORSKI. That is what we want to get to. But in this technical assistance team analysis, your major findings were that the contractor professional level personnel performed nontechnical administrative functions. In calendar year '87, approximately 6,100 hours of nontechnical administrative work costing approximately $187,000 were provided by these contract professionals, and they were paid at over $30 an hour or at least some of them were paid at over $30 an hour but they were doing work that could clearly be handled in-house by far less technical people, receiving far less money.

Mr. MARTIN. Yes, that is exactly our findings.

Mr. SIKORSKI. Secondly, you found that EPA violated the federal acquisition regulation, the FARS, its own manual regulations, by using contractor staff for personal services in the remedial response center, and you talked about how that was changed by hiring AARP people.

Mr. MARTIN. That is correct.

Mr. SIKORSKI. You also found that the EPA needed to improve its monitoring of the contractor's performance using these FMRs—all these acronyms—The Federal Financial Management Reports. You thought the DPO, the deputy project officer, should be using these reports to ensure that actual dollars and hours expended are on target with those authorized in the original contract, and what you found is that there is little time spent on these and that the hours and money get skewed out of proportion because there is little use of these as a management tool.

Mr. MARTIN. That is correct. Routine management tools were not used at all, or were used in an untimely way.

Mr. SIKORSKI. Another one is the monthly status report, the MSRs. They are supposed to describe the task performed, put time limits on them and place arrangements on them. You found that the DPO spent only a few minutes each month in monitoring, and that the final cost showed up at 47 percent on the MSRs, 47 percent above the original price. So far so good?

Finally, on the TAT, you found that EPA did not always provide substantive comments to support the ratings that supported these awards. Is that correct?

Mr. MARTIN. That is correct.

Mr. SIKORSKI. Switching to the field investigative team contract that you looked at, you went at a contract between the EPA and the NUS Corporation. That contract's estimated value was $125 million and it was supposed to perform basic preremedial investigation activities—field work—and this is Region 1?

Mr. MARTIN. 1, 2, 3 and 4.

Mr. SIKORSKI. This is 1 through 4. Your two major findings were that EPA paid award fees for substandard work and work that included large amounts of support tasks, such as training, and equipment maintenance. You had this real problem of people, you just lost a whole team of people who took off. Morale was down. Instead of doing field work they were doing file work.

Mr. MARTIN. That is in Region 1.

Mr. SIKORSKI. You also found that contractor personnel spent an excessive amount of hours on support services. All of the FITS exceeded the slated level, and in total you found that—you estimated that the FITs charged 200,000 hours, 41 percent of the total FIT hours allocated for that year, to support activities which cost the EPA $1.6 million.

Mr. MARTIN. Yes, that is correct.

Mr. SIKORSKI. And the contractor benefited from the support services because they were assisting directly with doing the things that the DPO, or the project officers, wanted them to do and if you do a good job on this stuff you probably would get a good review and award later on. Is that the point?

Mr. MARTIN. In our work we were told that part of the reason, in various parts of some of these contracts, why contractors did things that were not necessarily proper, were because on the one hand the same people that were giving them the instructions had a major hand in later renewing their contract. They sat on review boards, contract boards, perhaps, that would rate their performance.

Mr. SIKORSKI. For this contract, for these awards and for future contracts.

Mr. MARTIN. That is right.

Mr. SIKORSKI. And the point here, in the Civil Service Subcommittee, is that these support services have traditionally been done by civil servants in-house.

Mr. MARTIN. That is right.

Mr. SIKORSKI. And they certainly could be. If there is a historical precedent that they had been contracted out, arguably it is something that can be done if there is a long-term need by civil service, and arguably it could be done cheaper.

Mr. MARTIN. Almost invariably, when we spoke to the EPA employees who are actually involved in approving the work of con-

tractor personnel to do support-type tasks, administrative-type tasks, when we asked them why that occurred, the simple answer was, they just simply did not have enough EPA employees to do the jobs and so they farmed it out as best they could. It was a convenient way of getting the job done.

Mr. SIKORSKI. Answer the phones? The phones are ringing, we need someone to answer the phones and we do not have someone on detail? Now why do you believe that the region used those personnel—well, I guess you just answered that question. I do not have to go over that.

How can the contractor evaluation process be strengthened?

Mr. MARTIN. Well, we pointed out a number of areas that are—that really get down to basic contract management, that the award fee itself has got to be based on demonstrated performance. Evaluations have got to be adequately justified. Evaluation forms have to be processed on a timely basis because a major value of doing contractor evaluation forms is that you are doing them relatively concurrently with the work going on so that the contractor not only knows how he is doing, but you can integrate that into the process of the award fee so when they are not done on a prompt basis you really lose their value. So covering those standard kind of management things would help a lot.

Mr. SIKORSKI. This is not a new problem, but your most recent audit is new. You have not seen light-year changes in management techniques, because you are still recommending, as I understand, that the award fee should be based on demonstrated performance. That requires a strong evaluation and numbers ratings. You also recommended the regional DPOs get involved in assessing and evaluating——

Mr. MARTIN. You are right. We are not talking about Star Wars technology here. We are talking about down to the basics.

Mr. SIKORSKI. And we are talking about right now.

Mr. MARTIN. That is right. Right now.

Mr. SIKORSKI. Your testimony indicated that the Office of Solid Waste Personnel—and this is I think the third point, which I did not go through, and the FIT and the TAT business—rather than contracting officers were ordering work from contractors. What kinds of problems does this create?

Mr. MARTIN. Well, I think that—one of the witnesses coming up behind me is Dave O'Connor, the Director of Contracts Management Division. I have a lot of respect for Dave. I think he is a very technically qualified person. His heart is in the right place. He is doing a lot to try to improve contract management in EPA.

He is swimming against the tide, and he is walking uphill. There is such a tremendous pressure in EPA to get the work accomplished that everyone has the general idea that you do not need to be too careful with following the rules, and we hear that as a consistent theme in EPA as far as following the contracting process. We have got to get the job done. Let us not be too concerned about the steps in between.

Now, very simply put, when you have people working out of the chain of command and directing contractors to do work, that work has not gone through the proper chain through the contract officers. First of all, they could be asking for work that is not needed.

They could be asking for work that is not covered, perhaps, under the terms of the particular contractor work order that we are dealing with, and there may not even be funds available to do the work.

Again, we are not talking about tremendously complicated concepts here, but just the standard process that we have got to follow in making sure that a contractor does the work that they are being paid to do and the work is needed.

Mr. SIKORSKI. And Congress assisted in putting the pressure on EPA to turn these things around——

Mr. MARTIN. I would say in fairness both the past administrator of EPA as well as the current administrator and the Congress are very concerned about having work done in a more timely way, and that as I said there is tremendous pressure within the Agency to get the job done, get on with it. And fighting against that is any effort to make sure that while certainly we have to achieve that goal, we have got to do it in a way that protects the government's interest.

Just one more point, Mr. Chairman. I think that it is—something that we spoke about earlier—I think it is very important that EPA take a look at the process it has for awarding fees in case of substandard performance.

It is built into their system that they can do that. They can give an award fee if part of the work is judged to be good even though perhaps the overall product is substandard. That is a complicated area. It has to do with the way the contracts are structured and how they are paid for.

There is some logic to what they propose, but I think that is a very critical area. If you remember, I referred to in my testimony that one of the project officers in dealing with a contractor gave the contractor virtually 100 percent negative ratings on all aspects of work, yet the contractor received the award fee.

Mr. SIKORSKI. What page was that on your testimony? I remember I circled it. As I recall it was 91 percent substandard.

Mr. MARTIN. Right. Page 13 of the full testimony. The point that I want to make was that when we went and examined EPA's justification for the award, there basically was not any. So we are not able to determine, from an objective point of view, whether there was some rationale for making an award like that under the circumstances. That is why the entire process really needs to be not only thought through very carefully but monitored properly and justified properly so that there can be some objective evaluation of what is going on. I think it is an area that really needs focus.

Mr. SIKORSKI. Mr. Bradley, anything to add?

Mr. BRADLEY. I will add a little to what John said. When we looked at this we also found out that the work the EPA did look at was the work the contractor elected to submit for his award. It was not randomly selected or anything. He picked what he wanted evaluated.

Mr. MARTIN. They apparently have a system where the contractor can recommend, I believe the figure is 60 percent of his work to be evaluated, and then so the evaluation, as I understand it, is not even conducted on the 40 percent that the contractor excludes.

Then that 60 percent becomes the basis for the award fee. As I said, I think it is a system that needs——

Mr. SIKORSKI. It makes me think of another issue we will deal with on the next panel directly, regarding how far they can look back.

Apparently the system is set up so in terms of looking at qualifications you cannot go beyond certain knots that are tied around the application in the contract process, and this is a conflict of interest issue and I expect that we will be looking more at that as we go along. We hear a lot of criticisms of that.

Mr. Konz, do you have anything to add?

Mr. KONZ. No, thank you.

Mr. SIKORSKI. I thank you. As I understand the major points then, EPA is awarding bonus fees on the basis of incomplete data and for work which is substandard; EPA has used contractor personnel to perform administrative or support functions that they are paying a technical level fee for that they could do in-house or at certainly a smaller fee, and in the RCRA program the Agency has seemingly lost control over its contractors, paying for unauthorized work initiated by the contractors themselves in some instances. Is that a fair three points?

Mr. MARTIN. Yes, sir.

Mr. SIKORSKI. Good. Thank you very much, gentlemen. We appreciate your cooperation and assistance, and good luck. Our next panel consists of two officials from the EPA: Mr. David J. O'Connor and Mr. Henry L. Longest.

Mr. O'Connor is the Director of EPA's Procurement and Contracts Management Division, with the Assistant Administrator for Administration's Office of Administration. Say that quickly ten times. Mr. Longest is the Director of EPA's Office of Emergency Remedial Response, better known as the Superfund program.

Mr. O'Connor, you got the swimming upstream award earlier—webbed feet. Okay, who wants to begin?

Mr. O'CONNOR. Why do I not start, Mr. Chairman.

STATEMENT OF DAVID J. O'CONNOR, DIRECTOR, PROCUREMENT AND CONTRACTS MANAGEMENT DIVISION, OFFICE OF ADMINISTRATION, U.S. ENVIRONMENTAL PROTECTION AGENCY, ACCOMPANIED BY HENRY L. LONGEST II, DIRECTOR, OFFICE OF EMERGENCY AND REMEDIAL RESPONSE

Mr. O'CONNOR. I have submitted my written testimony for the record.

Mr. SIKORSKI. And we appreciate that, and it is quite helpful.

Mr. O'CONNOR. What I would like to do is summarize just the key points of that. As has been stated already this morning, EPA relies very heavily on contractor support to accomplish its mission. In the last fiscal year we had contract obligations of just over a billion dollars, and as was pointed out, that is a very significant portion of the total Agency budget.

Given this level of contracting, we understand and we share concerns about the integrity of the procurement process and the objectivity of the decisions coming out of EPA. I would again point out that the contracting workload since 1984 has doubled while in-

house resources during this period have been comparatively flat. We acknowledge right up front, Mr. Chairman, that we have experienced serious growing pains during this period, and we also acknowledge that we have considerable progress to make. I believe, however, that we are fundamentally sound in our approach to contract management, and we will continue to expend a great deal of effort to strengthen it. In the last couple of years we have taken a number of significant initiatives to strengthen contract management, and I would characterize the most important of these as initiatives that provide, in some cases for the first time, direct focus on contract management in areas where it did not exist earlier.

For example, if you were to look at the Procurement and Contracts Management Division in the past, you would see—as was stated earlier—that the focus was on preaward activities, that is, awarding contracts. Our contracting officers were responsible for the award process as well as contract management, but their time was primarily spent in the award phase. That is not altogether surprising, because our system for recognizing employees, for advancing them and for rewarding them, was based on contract awards, not on contract management.

Our quality assurance program in previous years focused pretty much entirely on the award process. We did not really have a quality assurance program for contract management. Now, we have retained, of course, those important focuses on the award phase, but in the last couple of years we have been redirecting the greater share of our resources to contract management.

For example, within the division we now have separate sections of contracting officers whose sole responsibility is contract management. They have no responsibility whatsoever for contract awards and are no longer burdened with that responsibility. We have a new quality assurance program. The sole purpose of that is to evaluate how well contracting officers and how well project officers perform their job in managing contracts, not in awarding them. We have established a financial analysis function in the division, staffed by auditors, cost analyst CPAs. Their responsibility is to review company records at the accounting offices of our major contractors, and while this is a new initiative, it has already resulted in over $2 million in costs being returned to EPA due to improper billings.

Finally, for the first time ever, we have put regional contracting officers out in the regional offices around the country to assist EPA's site managers in managing those contracts out in the field.

If you were to look at EPA's program offices you will see similar initiatives. Many of the programs, including Superfund, are establishing centralized contract management units whose purpose is to strengthen contract management in the organizations. There is considerable emphasis being placed on specific training for specific programs.

A couple of months ago the Administrator of the Agency issued a policy memo emphasizing the need for sound contract management and charged the assistant administrators and the regional administrators with developing plans within their organizations to ensure good, sound contract management.

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I mention these specific examples, Mr. Chairman, because they are serious initiatives and they are substantive initiatives. They are not paper initiatives, and in my view they represent a rather significant change in the philosophy of the Agency toward contracting. Certainly these initiatives will not perform miracles. They will not correct all the problems overnight, but I think they are strong steps in the right direction.

Mr. Chairman, this issue of conflict of interest is a particularly serious issue at EPA. We understand the impact it can have on our credibility and particularly on our enforcement efforts. Now, conflict of interest has a very broad spectrum. It is impossible to quantify, and it is impossible to identify in advance all of the potential conflict of interest situations that might arise.

In our Superfund program we know where the greatest potential for conflict of interest exists, and we deal with those situations up front.

We are particularly concerned that we do not face our contractors across the table in the court of law in an enforcement action. We have rather strict conflict of interest provisions that prohibit our contractors from working for the private sector or for state and local governments on Superfund sites in the parts of the country covered by their contracts. This provision applies during the term of our contract as well as three years after its completion.

Beyond the specific situations which we are able to identify up front, EPA follows the same procedures as other federal agencies and is guided by the same federal regulatory guidance on conflict of interest. We put our contractors on notice that it is their responsibility, above and beyond those situations which we identify, to be alert to possible conflict of interest and to bring those situations to our attention.

Mr. Chairman, that summarizes the key points in my written statement and I thank you for the opportunity.

[The statement of David J. O'Connor follows:]

TESTIMONY OF
DAVID J. O'CONNOR
DIRECTOR
PROCUREMENT AND CONTRACTS MANAGEMENT DIVISION
OF THE
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON CIVIL SERVICE
COMMITTEE ON POST OFFICE AND CIVIL SERVICE

FEBRUARY 23, 1989

THANK YOU FOR THIS OPPORTUNITY TO TESTIFY TODAY ON THE ENVIRONMENTAL PROTECTION AGENCY'S USE OF CONTRACT SUPPORT IN MEETING ITS STATUTORY OBLIGATIONS. I BELIEVE THAT THE SUBCOMMITTEE HAS SPECIFIC CONCERNS WITH THE AMOUNT AND EXTENT OF CONTRACTING PERFORMED FOR EPA, THE NATURE OF THE TASKS CONTRACTED OUT, AND WHETHER THE WORK IS PERFORMED IN A COST-EFFICIENT AND OBJECTIVE MANNER. IN ADDITION, I AM PREPARED TO DISCUSS ANY FINDINGS AND RECOMMENDATIONS IN RECENT GENERAL ACCOUNTING OFFICE AND INSPECTOR GENERAL AUDIT REPORTS.

EPA IS A HEAVY USER OF CONTRACTORS. IN FISCAL YEAR 1988, EPA OBLIGATED $1 BILLION IN CONTRACT AWARDS, ROUGHLY 20% OF THE AGENCY'S TOTAL BUDGET. GIVEN THE LARGE AMOUNT OF CONTRACTING PERFORMED FOR THE AGENCY, I UNDERSTAND ANY CONCERNS THE SUBCOMMITTEE MAY HAVE ABOUT THE INTEGRITY AND CREDIBILITY OF THE CONTRACT PROCESS AT EPA AND THE OBJECTIVITY OF THE WORK PRODUCTS. HOWEVER, I BELIEVE THAT THE AGENCY HAS DEALT EFFECTIVELY WITH THESE CONCERNS. TODAY I HOPE TO MINIMIZE THEM BY DISCUSSING HOW EPA HAS ADDRESSED EACH OF THEM.

TYPE OF WORK PERFORMED

FIRST, I WILL DISCUSS THE ISSUE OF THE TYPE OF WORK BEING PERFORMED BY CONTRACTORS. EPA IS VERY CAREFUL TO PERFORM INHERENTLY GOVERNMENTAL FUNCTIONS IN-HOUSE. EPA MANAGERS DECIDE WHICH FUNCTIONS TO CONTRACT OUT BASED ON THEIR AVAILABLE RESOURCES, WHICH INCLUDE THEIR IN-HOUSE STAFF AND THEIR EXTRA-MURAL BUDGET. POLICY DECISIONS AND OTHER INHERENTLY GOVERNMENTAL FUNCTIONS ARE RESERVED FOR AGENCY EMPLOYEES.

I WOULD ALSO LIKE TO POINT OUT THAT THE VAST MAJORITY OF OUR SUPERFUND CONTRACTING DOLLARS ARE USED TO CLEAN UP HAZARDOUS WASTE SITES. IN FISCAL YEAR 1988, ABOUT 95% OF THE $615 MILLION CONTRACT DOLLARS OBLIGATED IN THE SUPERFUND PROGRAM WAS SPENT ON SITE CLEANUP WORK.

CONTRACT MANAGEMENT

SINCE WE HAVE A LARGE CONTRACTOR WORKFORCE, IT IS IMPERATIVE THAT WE HAVE AN INSTITUTIONALIZED AND SOUND APPROACH TO CONTRACT MANAGEMENT. WE CONTINUE TO PLACE MORE EMPHASIS ON CONTRACT MANAGEMENT SINCE IT IS THE KEY TO ENSURING A GOOD WORK PRODUCT AND PROPER SPENDING OF THE TAXPAYERS' MONEY. I AM PROUD TO SAY THAT WE ARE IMPROVING OUR CONTRACT MANAGEMENT THROUGH A NUMBER OF INITIATIVES. THESE INCLUDE:

- o INCREASING THE NUMBER OF CONTRACT PERSONNEL TO PERFORM CONTRACT MANAGEMENT;

- ESTABLISHING SEPARATE SECTIONS WITHIN THE PROCUREMENT DIVISION DEVOTED SPECIFICALLY TO CONTRACT MANAGEMENT;
- DECENTRALIZING SIGNIFICANT CONTRACT MANAGEMENT RESPONSIBILITIES TO THE REGIONAL OFFICES;
- INCREASING THE NUMBER OF QUALITY ASSURANCE REVIEWS OF INTERNAL CONTRACT OPERATIONS;
- PERFORMING MORE FINANCIAL MONITORING REVIEWS OF CONTRACTOR RECORDS; AND
- PROVIDING ADDITIONAL TRAINING IN CONTRACT MONITORING FOR RESPONSIBLE PROGRAM OFFICE PERSONNEL.

WE HAVE ALSO DEVELOPED A NUMBER OF SPECIALIZED TRAINING COURSES FOR PROGRAM PERSONNEL. FOR EXAMPLE, EFFORTS ARE UNDERWAY TO DEVELOP COURSES EXCLUSIVELY FOR REMEDIAL PROJECT MANAGERS IN THE SUPERFUND PROGRAM AND FOR WORK ASSIGNMENT MANAGERS IN THE OFFICE OF SOLID WASTE. EPA ALSO PLANS TO DEVELOP SIMILARCOURSES FOR OTHER PERSONNEL WHO OVERSEE SUPERFUND WORK, SUCH AS ON-SCENE COORDINATORS.

MANAGEMENT SUPPORT CONTRACTS

I ALSO RECOGNIZE THAT THERE HAS BEEN CONCERN ABOUT EPA'S USE OF MANAGEMENT SUPPORT CONTRACTS. USING THIS APPROACH, EPA AGGREGATES SIMILAR SERVICES FOR OPEN COMPETITION UNDER A SINGLE MANAGEMENT SUPPORT CONTRACT. AFTER THE CONTRACT AWARD, THE CLIENT OFFICE THEN ISSUES SPECIFIC TASKS TO THE CONTRACTOR TO

PERFORM A SERVICE, THE ALTERNATIVE BEING A SEPARATE COMPETITION FOR EACH TASK. IF THE AGENCY HAS TO DEPENDENTLY COMPETE EACH TASK IT WOULD BE IMPOSSIBLE FOR THE AGENCY TO FUNCTION EFFECTIVELY. SINCE EPA CURRENTLY HAS ABOUT 840 ACTIVE CONTRACTS WITH SEVERAL THOUSAND WORK ASSIGNMENTS, WE BELIEVE THAT OUR APPROACH IS THE MOST EFFICIENT WAY TO DO BUSINESS.

GENERAL CONFLICT OF INTEREST

THE NEXT ISSUE I WOULD LIKE TO DISCUSS IS CONFLICT OF INTEREST SITUATIONS. I REALIZE THE IMPORTANCE OF AVOIDING CONFLICTS OF INTEREST. IN SUPERFUND, FOR INSTANCE, WE CANNOT AFFORD TO HAVE CONTRACTORS WHO PERFORM CLEANUP WORK FOR THE AGENCY ALSO WORKING FOR THE COMPANY RESPONSIBLE FOR CREATING THE HAZARDOUS WASTE SITE.

THE GOVERNMENT-WIDE FEDERAL ACQUISITION REGULATIONS SET FORTH GUIDANCE FOR AVOIDING OR MITIGATING CONFLICTS OF INTEREST ON A CASE-BY-CASE BASIS. EPA FOLLOWS THAT GUIDANCE. IN ADDITION, BECAUSE OF OUR SENSITIVITY TO CONFLICTS OF INTEREST, OR THE APPEARANCE OF SUCH IN THE SUPERFUND PROGRAM, WE HAVE DEVELOPED SPECIAL CONFLICT OF INTEREST PROVISIONS BEYOND OUR STANDARD ONES TO ENSURE PROPER USE OF CONTRACT SUPPORT. OUR STANDARD PROVISIONS HAVE A TWO-FOLD PURPOSE:

THE FIRST ANTICIPATES CONFLICTS BEFORE AWARD OF A CONTRACT. PROSPECTIVE CONTRACTORS MUST CERTIFY THAT THEY ARE UNAWARE OF ANY POTENTIAL CONFLICT OF INTEREST THAT WOULD DIMINISH THEIR ABILITY TO PERFORM THE WORK. IF THEY ARE UNABLE TO DO SO, THEY

MUST PROVIDE RELEVANT INFORMATION ON ANY PAST, PRESENT, OR PLANNED INTERESTS RELATING TO POSSIBLE CONFLICTS. THE SECOND ADDRESSES CONFLICTS THAT ARISE DURING CONTRACTOR PERFORMANCE. EACH CONTRACTOR MUST ADVISE EPA OF ANY CONFLICT DISCOVERED DURING JOB PERFORMANCE. IF EPA CANNOT AVOID OR MITIGATE THE CONFLICT, THE AGENCY MAY TERMINATE THE CONTRACT. IF THE CONTRACTOR KNEW OF THE CONFLICT BEFORE CONTRACT AWARD BUT DID NOT INFORM OR MISLED EPA, THE AGENCY MAY TERMINATE THE CONTRACT FOR DEFAULT OR INITIATE DEBARMENT PROCEEDINGS.

SUPERFUND CONFLICT OF INTEREST

IN ADDITION, EPA HAS ADDITIONAL CONFLICT OF INTEREST REQUIREMENTS WHICH MUST BE ADHERED TO IN THE SUPERFUND PROGRAM. I WILL BRIEFLY DESCRIBE THEM FOR YOU:

FIRST, THE AGENCY DOES NOT CONTRACT WITH A FIRM THAT HAS TIES TO A COMPANY OR INDIVIDUALS POSSIBLY RESPONSIBLE FOR CREATING THE HAZARDOUS WASTE SITE.

SECOND, PRIOR TO BEGINNING ANY SITE WORK, THE CONTRACTOR MUST NOTIFY EPA OF ANY ACTUAL OR POTENTIAL CONFLICT OF INTEREST SURROUNDING THE JOB.

THIRD, A SUBCONTRACTOR MUST PROVIDE EPA WITH ITS CONFLICT OF INTEREST STATUS AND THE STATUS OF ANY PARENT COMPANIES, AFFILIATES, OR SUBSIDIARIES WHICH MAY BE RESPONSIBLE FOR CREATING THE HAZARDOUS WASTE SITE.

FOURTH, THESE PROVISIONS ALSO APPLY TO INDIVIDUAL CONTRACTOR EMPLOYEES. IF ANY CONFLICT OF INTEREST INVOLVING AN

EMPLOYEE IS IDENTIFIED, THE INDIVIDUAL MAY BE DISQUALIFIED FROM PERFORMING THE JOB. THE CONTRACTOR MUST ALSO INFORM EPA IF ANY EMPLOYEE HAS WORKED AT A SUPERFUND SITE IN ANY CAPACITY FOR ANOTHER COMPANY.

FINALLY, A CONTRACTOR MAY NOT COMPETE WITHIN THE ZONE OF ITS CONTRACT FOR SUPERFUND PROJECTS OFFERED BY THE PRIVATE SECTOR WHERE EPA HAS INITIATED AN ENFORCEMENT ACTION, OR WHERE THE CLEAN-UP WORK WAS A RESULT OF SUCH AN ACTION. EXCEPTIONS ARE MADE ONLY IF THE AGENCY DETERMINES THAT NO CONFLICT EXISTS AFTER REVIEWING THE PROJECT. A CONTRACTOR MAY ALSO NOT COMPETE FOR CONTRACTS OFFERED BY STATES THAT RESULTED FROM SUPERFUND COOPERATIVE AGREEMENTS WITHOUT AGENCY APPROVAL.

COMPETITION

FINALLY, I WOULD LIKE TO BRIEFLY DISCUSS COMPETITION. I AM PLEASED TO REPORT THAT OUR RECORD OF COMPETITION IS EXCEPTIONAL. IN FISCAL YEAR 1987, 97% OF ALL CONTRACT DOLLARS, INCLUDING CONSULTANT CONTRACTS, WERE AWARDED COMPETITIVELY. EPA DISCOURAGES SOLE SOURCE CONTRACTUAL ARRANGEMENTS. THE COMPETITION IN CONTRACTING ACT REQUIRES VERY SPECIFIC JUSTIFICATIONS FOR CONTRACTS NOT OPENLY COMPETED AND MAKES IT DIFFICULT TO JUSTIFY THIS TYPE OF ARRANGEMENT. IT MAKES GOOD SENSE, FROM BOTH AN ADMINISTRATIVE AND A CONTRACTS PERSPECTIVE, TO OPENLY COMPETE CONTRACTS.

THIS CONCLUDES MY FORMAL STATEMENT. I WILL BE HAPPY TO ANSWER ANY QUESTIONS YOU MAY HAVE REGARDING THE ENVIRONMENTAL PROTECTION AGENCY'S USE OF CONTRACTORS.

Mr. SIKORSKI. Thank you, Mr. O'Connor. Mr. Longest, your testimony will be in the record as submitted, and you can use your time as you like.

STATEMENT OF HENRY L. LONGEST

Mr. LONGEST. Mr. Chairman, Superfund in the last several years has instituted many management improvements and developed an infrastructure to make the program more effective and efficient. Contract management has been an area which has been given particular attention. It is our intention that the full implementation of these measures will help to diffuse the negative perceptions of the management of this program.

It is a matter of deep concern that the management of Superfund has been the object of recent criticism in various reports and press articles. The assessments are focused on two different kinds of extramural activities: Superfund field response contracts and headquarters technical, policy, and management support contracts.

From our critics, four basic themes seem to have emerged. First, that contractors are doing too much Superfund work. Second, we are especially vulnerable to actual and potential conflicts of interest. Third, that we are hampered by inexperienced staff and high employee turnover and fourth, that contractors are performing inherently governmental functions.

We want to specifically address and answer each of these four issues. In response to the first statement, that contractors are doing too much Superfund work, the Agency must implement the Superfund program with the resources allocated through the budget process.

Superfund was first established as a short-term program needing instant and specific expertise. The Agency was directed to draw heavily from the private sector to procure specialized skills and services. It is a fiscal fact of life that Superfund resources are leveraged through the use of contract dollars.

As will be illustrated later, we would be unable to meet the numerous requirements of SARA, which is the reauthorization of the original CERCLA, plus pursue the development and implementation of initiatives to improve the program, without contract support.

To the second issue of ripeness for contract conflict of interest, we would point out that this program carefully implements requirements of the Federal Acquisition Regulations and EPA-specific procurement regulations to preclude such occurrences.

Further, we routinely conduct assessments of areas vulnerable to waste, fraud and abuse, in full compliance with the requirements of the Federal Managers Financial Integrity Act. To the extent that there may yet be vulnerabilities, we welcome the opportunity to work with this committee to assure even more effective avoidance of such conflict or appearances of conflicts.

The third issue of inexperienced EPA staff dealing with contractors and the extent of turnover of EPA staff due to recruitment by contractors is one on which we have focused a good deal of attention. Over the past year, this office has developed and is now imple-

menting a program to attract and retain remedial project managers and on-scene coordinators.

The overall goals of this endeavor are to provide specific career development and enhancement opportunities to this important segment of our work force. We realize that employee competence and turnover is a significant problem, especially considering the lucrative enticements that tend to lure our staff out of federal service, and we are exploring many avenues to remedy the problem.

In response to the fourth issue of contractors inappropriately performing governmental functions, Superfund contractors are not to perform such work under any circumstances. We abide by the Federal Acquisition Regulations which prohibit contractor performance of work of a policy-making, decision-making or managerial nature that is a direct responsibility of Agency officials.

It is a misconception to conclude that contractors are creating policy because Superfund uses contractor assistance in summarizing meetings, compiling statistics, preparing options and other comparable services. Superfund managers and staff appropriately control and direct the services of contractors and then review and analyze all resulting material. Following this,the Agency work group and decision-making process culminates in a definite government position. It is incorrect to assume that the existence of contractor-prepared deliverables represents policy creation by contractors.

In conclusion, I would just like to say that Administrator Reilly has already undertaken a management study of Superfund to which he committed during his confirmation hearing. I can assure you that the study will be objective and exhaustive. We welcome this examination of Superfund, as we have always supported oversight and constructive programmatic criticism. We are ready to implement any further measures that may be deemed necessary to augment contractor management and control systems. The efficient activation and completion of well-managed cleanups is a priority goal in the Agency.

[The statement of Henry L. Longest, II follows:]

STATEMENT OF
HENRY L. LONGEST II
DIRECTOR
OFFICE OF EMERGENCY AND REMEDIAL RESPONSE
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON CIVIL SERVICE
OF THE
COMMITTEE ON POST OFFICE AND CIVIL SERVICE
U. S. HOUSE OF REPRESENTATIVES

FEBRUARY 23, 1989

Good morning, Mr. Chairman and members of the Subcommittee. I am grateful for the opportunity to discuss the management of contractor resources in the Office of Emergency and Remedial Response (OERR). With over $1.8 billion in contracts obligated since the inception of the Superfund Program, we bear a special responsibility for good stewardship of these funds.

I am pleased to report to you that Superfund has achieved a great deal in the management of both our Headquarters support and field response contracts. In the last several years, we have instituted many management improvements and developed an infrastructure to make the program more effective and efficient. Contracts management has been an area which has been given particular attention. It is our intention that the full implementation of these measures will help to diffuse the negative perceptions of the management of this program.

It is a matter of deep concern that the management of Superfund has been the object of recent criticism in various reports and press articles. These assessments are focused on two different kinds of extramural activities: Superfund field

response contracts, and Headquarters technical, policy, and management support contracts. From our critics, four basic themes seem to have emerged: 1) that contractors are doing too much Superfund work, 2) that we are especially vulnerable to actual and potential conflicts of interest, 3) that we are hampered by inexperienced staff and high employee turnover and, 4) that contractors are performing inherently governmental functions. We want to specifically address and answer each of these four issues.

In response to the first statement, that contractors are doing too much Superfund work, the Agency must implement the Superfund program with the resources allocated through the budget process. Superfund was first established as a short-term program, needing instant and specific expertise. The Agency was directed to draw heavily from the private sector to procure specialized skills and services. It is a fiscal fact of life that Superfund resources are leveraged through the use of contract dollars. As will be illustrated later, we would be unable to meet the numerous requirements of SARA plus pursue the development and implementation of initiatives to improve the program without contract support.

To the second issue of ripeness for conflict of interest, we would point out that this program carefully complies with all requirements in Federal Acquisition Regulations and EPA-specific procurement regulations to preclude such occurrences. Further, we routinely conduct assessments of areas vulnerable to waste,

fraud, and abuse, in full compliance with the requirements of the Federal Managers Financial Integrity Act. To the extent that there may yet be vulnerabilities, we welcome the opportunity to work with the Committee to assure even more effective avoidance of such conflicts or appearances of conflicts.

The third issue of inexperienced EPA staff dealing with contractors and the extensive turnover of EPA staff due to recruitment by contractors, is one on which we have focused a good deal of attention. Over the past year, this office has developed and is now implementing a program to attract and retain Remedial Project Managers and On-Scene Coordinators. We are developing a basic training regimen and higher level training institutes on all areas of site project management and response; providing continuing education with multi-year employment commitments; presenting awards to officially recognize outstanding performance; supporting professional development; improving Superfund workforce planning techniques; and reviewing compensation and classification practices. The overall goals of this endeavor are to provide specific career development and enhancement opportunities to this important segment of our workforce. We realize that employee competence and turnover is a significant problem, especially considering the lucrative enticements that tend to lure our staff out of Federal service, and we are exploring many avenues to remedy the problem.

In response to the fourth issue of contractors inappropriately performing governmental functions, Superfund contractors are not to perform such work under any circumstances. We abide by the Federal Acquisition Regulations which prohibit contractor performance of work of a policy-making, decision-making, or managerial nature that is the direct responsibility of Agency officials. It is a misconception to conclude that contractors are creating policy, because Superfund uses contractor assistance in proposing agendas, summarizing meetings, compiling statistics, preparing options, and other comparable services. Superfund managers and staff appropriately control and direct the services of contractors, and then review and analyze all resulting materials. Following this, the Agency workgroup and decision-making process culminates in a definitive government position. It is incorrect to assume that the existence of a contractor-prepared deliverable, (following this exercise of Agency discretion, analysis, and decision-making) represents policy creation by contractors.

The Superfund Annual Report to Congress is a good example of the manner in which Superfund decision making and management is supported by contractor assistance. Contractors assisted in document research, interviews, data compilation, and analyses under the explicit direction of an EPA project manager. This project involved OERR staff oversight of broadly ranging and detailed input, not only from the Superfund office, but from other EPA offices and outside Federal agencies, as well. The

resources expended for this effort were approximately 4,000 contractor hours and 2,000 EPA staff hours. Had we not employed contractor assistance in these support functions, other priority regulatory, guidance, or directive activities would not have been performed or managed by Superfund staff. The management of this exceedingly complex and challenging program requires a continuous assessment of priorities and balancing of available resources, in-house and commercial, to most efficiently achieve the goals we have set to clean up this nation's hazardous waste sites.

Administrator Reilly has already undertaken a management study of Superfund to which he committed during his confirmation hearing. We can assure you that this study will be objective and exhaustive. We welcome this examination of Superfund as we have always supported oversight and constructive programmatic criticism. We are ready to implement any further measures that may be deemed necessary to augment contractor management and control systems. The efficient activation and completion of well-managed cleanups is a priority goal in the Agency.

I would now like to give you a brief historical perspective and a current status report on controls now in place to assure accurate and accountable contract management in Superfund.

A review of the manner in which Superfund managed its contractor resources was one of my first priorities upon my arrival in Superfund nearly 3 years ago. Accordingly, an in-depth examination was undertaken of OERR practices in the use

of Headquarters policy, technical, and management support contractors. One of the purposes of this early study was to ascertain if there was any validity to the repeated charges that contractors, rather than Superfund managers, were creating Superfund policy. The study, which reviewed contract management practices and the utility of contractor deliverables, concluded that there were no major or systematic problems in the way we managed our contracts and that clearly, contractors were not producing Superfund policy. They were producing deliverables necessary to support the EPA work group process and appropriate Agency decision making. However, the stud[illegible]id conclude that several improvements could be made to make the internal management of our contracts more streamlined and accountable.

The study resulted in the implementation of three specific contracts management efforts for OERR Headquarters technical, management, and policy support contracts: 1) A Task Manager Training Course for all OERR work assignment managers, dealing with all phases of contractor direction from project start-up, through work plan development, project review and feedback, to product evaluation, and ethics, 2) The OERR Contracts Operating Plan which outlines all contract expenditures against OERR work plans to assure that contracts consistently support Office priorities, and 3) OERR Performance Evaluation of Support Contracts, in which each task manager performs a quarterly evaluation of contractor performance against technical, management and cost criteria.

Furthermore, we instituted a computerized Contracts Management Information System for all OERR contracts that maintains current information on types, project officers, periods of performance, dollar values and total obligations and outlays. We are currently incorporating procedures to project "burn" (or contract utilization) rates. We also developed a Remedial Project Manager (RPM) Training Course to help our Regional work assignment managers better direct their contractor resources and obtain high quality products at reasonable cost. These OERR contractor management courses are mandatory for all staff managing contracts and result in task manager certification. Over 60 percent of Headquarters staff has been trained, and the remainder will complete training this Spring. Training of Regional personnel has commenced with a pilot program and will be completed this year. It should be noted that EPA's Procurement and Contracts Management Division has for many years trained contract and project officers. Superfund work assignment manager training completes this training scenario by addressing specific technical management responsibilities of these contracts.

Several additional initiatives have been undertaken to improve the management of our field response contracts. Both the Removal and Remedial Programs are implementing contract strategies that focus on smaller, Region-specific contract mechanisms. The Remedial Program is awarding Alternative Remedial Contracts Strategy contracts (ARCS) and the Removal

Program is awarding Regional Emergency Response Cleanup Services contracts (also referred to as Mini-ERCS). The primary goals of these programs are 1) to increase competition within a geographical area by awarding multiple contracts, and 2) provide a stronger management role for the Regions by having the contracts administered and managed within the Regional Offices. We are pleased to report that though the implementation of ARCS is still in its early phases, we have awarded 23 ARCS contracts to date. In addition, the Removal Program has awarded nine Regional ERCS, and four site-specific cleanup contracts.

Further, we have instituted several Removal Program initiatives to improve the management and structure of the nation-wide ERCS contracts including 1) Regional Contract Management Reviews of these contracts, 2) an Internal Control Review, (in accordance with the Federal Managers' Financial Integrity Act) to assess the adequacy of Headquarters assistance/guidance to the Regions, 3) a PC-based software program to assist On-Scene Coordinators in performing contract cost estimation and management functions, and 4) restructuring of the ERCS contracts to be primarily cost-reimbursed instead of time and materials contracts.

Additionally, OERR is taking special measures to assure that all response contractors are fully apprised of Superfund policy and guidance by meeting semi-annually to discuss all new policy the office has developed. These meetings and discussions assure consistent interpretation and timely

application of Superfund directives and policies in any of the tasks our contractors perform for us.

Finally, we recently established the Contract Operations Review and Assessment Staff (CORAS) in Superfund, as a special unit to identify and resolve areas of vulnerability in the implementation of Superfund contracts. This staff performs internal contract coordination within OERR and interfaces with the EPA Procurement and Contract Management Division. CORAS activities have included an ADCS readiness assessment to identify contract start-up problems and suggested resolutions, a Regional Project Manager field guide for preparing contract paperwork, and an assessment of financial voucher approval roles and responsibilities. In particular, we have instituted periodic CORAS bulletins to apprise all OERR contracts management staff of recent improvements in contracts management mechanisms. This is a routine, user friendly, information transfer tool that assures maximum staff accessibility to the finer points of good contracts management practices.

All of these measures demonstrate that Superfund is committed to assuring that its contracts are managed responsibly and that all levels of staff are trained in proper control and direction of contractor resources.

In closing, we would like to point out that in the last two years Superfund has been building a strong and broad-based management foundation. Our management systems and infrastructure are solidly in place to deliver consistent, high

quality products and documents, defensible cleanup decisions, and dependable information to our constituents, the American public. Our contracts management procedures and systems are a primary element in that management foundation. Our management control systems will show that we are making every effort to achieve the best, most effective use of the public's tax dollars, particularly in the area of contracts management. We are committed to the maintenance and betterment of these management systems in order to achieve our goal of a Superfund program that earns the public's confidence in our dedication and ability to solve the nation's hazardous waste problems.

Mr. SIKORSKI. Let me thank both of you. Let me hit on a couple of the Inspector General's reports. On the FIT contract, looking at the contract region with the NUS Corporation, estimated value of $125 million; do the field investigative teamwork in Regions 1 through 4?

The FIT team number 1 was paid award fees of over $90,000 despite performing little actual field work, charging over half its time to support services, administrative services, and transferring a large segment of its team to work on a non-EPA state project as I understand it.

Now, the background on that is despite the fact that all preliminary field investigation is supposed to be carried out in accordance with the national contingency plan, the Superfund legislation. Region 1 decided to change the way in which it conducted these investigations and instead of having actual field work done, data was extracted from state agency files or from consultants working for the parties potentially responsible for the conditions—the waste, improper waste disposal, at the site itself.

To maintain the personnel's expertise, since these people were basically sitting around looking through files, the contractor held a series of mock field exercises in their back yard, outside the field office. Obviously, personnel and morale were adversely affected and as a result the FIT 1 office manager and the senior project manager resigned at the end of the first year of the contract.

The contractor, NUS, then decided to transfer over half of its top management staff, supposedly to respond to any potential domino effect, to an NUS satellite office to work on a state contract without even warning the EPA personnel.

EPA lost a significant educational investment in this transfer, as these contract personnel had attended an aggregate of 176 training courses funded by the EPA. This is not old news. This is a relatively recent occurrence. How are you adjusting to this kind of problem, Mr. O'Connor?

Mr. O'CONNOR. Mr. Chairman, I can address that from a contract perspective. I am not intimately familiar with the specific issues there. They do disturb me when I hear about them. It disturbs me when I hear about that kind of turnover from one of our contractors, particularly with the investment that you pointed out.

As far as the fee that they earned, they are of course entitled under the contract for a fee for whatever work they do. Now, the contract does provide for certain administrative work to be done in addition to field work, and if in a given period the contractor happens to do more administrative work than is normally expected he is entitled to a fee for that work that he has performed.

Mr. SIKORSKI. I am not suggesting that they made away with something they were not entitled to do or were not directed to do. The point is that the contractor was doing stuff for which they were not hired. It was not their primary mission, and it got so crazy that they were doing mock exercises outside, and they were supposed to be field teams.

Mr. O'CONNOR. I cannot respond to that, Mr. Chairman. I am sorry.

Mr. LONGEST. I would like to respond to that.

Mr. SIKORSKI. Is this your area, Mr. Longest?

Mr. LONGEST. Yes, sir. The FIT contracts are under the Superfund office. As you are aware, this particular contract covers four different regional offices and the problems relate to issues in Region 1 and Region 2.

I think there are a couple of important things, not to put forth excuses, but I think it is something that has to be recognized. This contract was awarded in November of 1986 and the new amendments, SARA, were passed in October of '86, so we had a situation where a contractor and the regional office were building up personnel at a fairly expanded rate due to the new amendments. We had many requirements to meet based on the new amendments.

The CHAIRMAN. Wait a minute. So it is our fault, and I want to know why——

Mr. LONGEST. Sir, I did not say that.

Mr. SIKORSKI. Well, I think that is the direction here. Before you go on, did you not have a 10 month order not to do any field investigations?

Mr. LONGEST. No, sir. Headquarters did not give any 10 month order not to do field investigation.

Mr. SIKORSKI. That is what happened in this instance. The order against on-site inspections lasted 10 months, and that is why they were up in the offices. You just gave me the impression that they were in the offices learning all the new amendments.

Mr. LONGEST. I am saying this was a start-up of a new contract, actually a five year contract. This was the first year of the contract, and I am just saying that it occurred at the same time we got the new SARA amendments. The amendments required us to do all of the preliminary assessments by date certain, and that was one date that EPA did make. There was also a requirement that we revise the hazard ranking system, so I am trying to give you some background.

The decision made in Region 1 was that before the new ranking system went into place they wanted to complete the preliminary assessments, and the site investigations for which they had the data in-house. Their decision was to complete existing projects in-house, and in fact I believe they listed about 17 new sites on the National Priority List as a result of this work. So they were making a decision at the time the new act was passed, to complete backlogged work before they proceeded with new work.

Mr. SIKORSKI. According to the Inspector General you were too lenient in evaluating the NUS performance and in giving the company award fees based on performance. One unit of contract employees received laudatory ratings and award fees of over $90,000 despite the fact that the field inspection team charged over half its time to support tasks, did not perform field work.

Mr. LONGEST. The principal activity of the FIT team over the term of the contract is PA SI—preliminary assessment/site investigation. But again, it was the start up of the contract, concurrent with our new legislation. We had a backlog of work that we needed to clean up. They were doing support work and training, that is allowable. All that work is allowable under the contract.

They were hiring new people, as was EPA. Those people needed to be trained not only in safety but on how to perform a site investigation. During the same period of time, EPA in 1987 added over

500 people to the Agency, most of whom went to Superfund. In 1988 over 800 additional people were brought into the Agency.

The point I am trying to make is, there was a significant increase in personnel, contractor and EPA, so it did require more training in the first year of the contract than we would expect in the remaining years.

Mr. SIKORSKI. If you look at the EPA staffing, according to the GAO report it has been held pretty constant for five years.

Mr. LONGEST. If you look at the next to the last page of the GAO testimony, it has the increases in EPA staff that I was just quoting from.

Mr. SIKORSKI. If you look at personnel in EPA in 1984 and then if you look at personnel in EPA in 1989, where are the increases?

Mr. LONGEST. This study was begun in 1985; 1986 to 1987, and the increase in staff from 1985 to 1986 was approximately 480 people; 1986 to 1987 approximately 500 people; and 1987-1988 approximately 800 people, so there were significant—and most of these, they are EPA numbers, but most of these staff were going into Superfund. So there were significant increases in Superfund staff, as well as contractor staff.

Mr. SIKORSKI. The Inspector General also cited an EPA official who was so upset at paying for contract workers to attend conferences that he wrote that the practice might not hold up too well under any type of scrutiny— Congressional, Inspector General or otherwise.

Mr. LONGEST. I do not know that particular instance. I could not respond to that.

Mr. SIKORSKI. I think that is this instance we were just talking about.

Mr. LONGEST. I mean an individual concerned about people going to conferences. I said I am not aware of, I am not familiar with that issue.

Mr. SIKORSKI. We are paying these people and these contract rates are not, as you know, minimum wage. They are not $8 or $9 an hour. They are up in the $20s, $30s and higher, and we have them answering the phones. That was another FIT problem, Mr. O'Connor.

You see, the reason I am going through these is because these are relatively recent incidents and in your testimony it is kind of, as I said earlier, "don't worry, be happy," in the sense that you said these, Mr. Longest, are perception problems, which gave me the impression they were not real problems And Mr. O'Connor, you said that you were dealing with these issues effectively. Let me find your testimony.

Mr. O'CONNOR. Mr. Chairman, what I said——

Mr. SIKORSKI. You said that you believe the Agency has dealt effectively with these concerns, and I hope to minimize them by discussing how EPA has addressed each of them.

The IG audit of the FIT contract with the NUS Corporation, Region 2 was very disturbing. Contractor's performance is reviewed every four months to determine the amount of award fee the contractor deserves for that period of work.

During NUS's first performance evaluation period, the NUS charged 39,198 hours of services rendered. The Agency's regional

project officer, the RPO, in her evaluation determined that while she was briefed periodically on the status of the team's work, she "usually had to prod the FIT office for this information." And NUS nevertheless received two satisfactory ratings and was awarded a fee of $28,261.

During the second evaluation period NUS charged 39,828 hours. The RPO, however—the regional project officer—made the following observation. I quote again:

> There continues to be a problem with who is briefing whom. The EPA RPO should not have to prod the FIT team leader for information on routine as well as high priority activities. It appears the FIT team leader is merely providing EPA with nothing more than lip service. Obviously, there is still some serious deficiencies in the area of communications which need improvement.

Despite this less than glowing review the contractor was awarded $62,405 in award fees. These are, as I understand it, performance fees.

During the third evaluation period NUS charged 37,569 hours and received the following evaluation from the regional project officer:

> The quality of FIT deliverables has been suffering. FIT continues to demonstrate a downward slide in their quality of writing and technical accuracy, as discussed in a number of the attached PARs.
>
> Major portions of PASI's and ESI work plans were poorly written, contained conflicting statements, and often were confusing and difficult to read. This poor performance has placed a tremendous burden on EPA staff to act as technical writers and editors in order to obtain reports consistent with EPA standards.
>
> For the first time since the inception of the FIT the paperwork which accompanied samples collected in the field has become shoddy. For example, sample chain of custody forms and traffic reports have been improperly filled out and on occasion have not been sent to the lab with the samples to be analyzed.
>
> All of these issues have been repeatedly discussed with the FIT office manager in great detail, but performance continues to decline.

Thus, NUS ultimately received a less than satisfactory rating during this period and for that it received $30,913 as an award fee.

Now, the question is, can you tell me why the Agency awards contractors for lip service, work that is technically, grammatically flawed and which places, and I quote, "a tremendous burden on EPA's staff to act as technical writers and editors in order to obtain reports consistent with EPA standards."?

Mr. LONGEST. Mr. Chairman, I believe that quote was from an individual in Region 2. The FIT contract covers four regions as was stated earlier, Regions 1 through 4. There were some problems with Region 2 FIT in the beginning, and in fact by the third evaluation period the contractor removed the office manager because of some of these very problems.

Mr. SIKORSKI. They got a performance award of 30 grand.

Mr. LONGEST. The reason I mentioned about the four regional offices, the board meets in headquarters along with regional representatives to determine the award fee, and it covers all four regional offices. So they may have done a good job in another regional office. We have not talked about Regions 3 or 4 for the FIT here. Or they may have done a good job on certain other functions that they performed.

Mr. SIKORSKI. That is not the Inspector General's conclusion.

Mr. LONGEST. I beg your pardon?

Mr. SIKORSKI. That is not the Inspector General's conclusion, that these awards were based on an evaluation that was consistently conducted over a period of time; that used numerical standards that actively involved the regional project officer.

Mr. LONGEST. But they do. They do. I know that for a fact. The award fee is based on a board that meets for these contracts, in Washington, with representatives from the regions.

They submit an evaluation of the contract, the various products that they produced, and the board gets together and looks across all four regions before it determines what the award fee will be for that period of time, and they meet three times a year.

The first time they met on this new contract, I believe was five months into the contract.

Mr. SIKORSKI. You said the problem was a team leader and it took a year to get the team leader out?

Mr. LONGEST. Yes. In Region 2 the problem was the office manager for the contract.

Mr. SIKORSKI. I do not know any federal employee who gets bad reviews and then gets award performances.

Mr. LONGEST. But when we say—well, that particular employee probably did not get an award performance. Again, it was a contract over four regions. This was one region where we had that particular problem.

Mr. SIKORSKI. Then why do you give an award for having a problem in this area.

Mr. LONGEST. We did not give him——

Mr. SIKORSKI. If you tried to sue on the basis of samples that were taken and then the chain of custody destroyed, what would happen?

Mr. LONGEST. We would lose.

Mr. SIKORSKI. You would lose, and you would lose probably hundreds of thousands, maybe millions of dollars in cleanup costs, and yet this contractor was going along for a year and the project officer was writing evaluations that were less than glowing, and then at the end of that four months they got an award fee.

Mr. LONGEST. May I just say that the first evaluation of the FIT contract was five months after the contract started. That was not a specific write-up in that evaluation period. We heard about it, in contact with the region, that they were having a problem. The region asked to have time to resolve the situation. It came up in the third review period.

Mr. SIKORSKI. Wait a minute. We just heard a glowing analysis of the contract management process; that it is on-line and it is taking care of these problems. We have heard from the GAO and the Inspector General that there are serious deficiencies in contract management system. You are saying that this thing was five months later on. There are all kinds of paper and procedure prior to five months into it that alerts to these problems.

Mr. LONGEST. No, sir. I am afraid that is not correct in this situation.

Mr. SIKORSKI. Why not? You are arguing the system did not turn anything out before then. He is arguing that the system is working great and we have eliminated deficiencies. And yet at the end of this process we have a big deficiency here, and I do not

think anyone is questioning whether this is appropriate. We do not think it is appropriate. We are arguing how it came about. So what is the situation? Nothing is on line beforehand, or are things on line and the management process is working well?

Mr. LONGEST. I am saying somewhere in the middle. If you bring a new contractor on, or if you bring a new employee on, it will take several months to determine how well the new employee is performing, and we are saying the first evaluation was at the end of five months of the new contract, and during that period of time we found that there was a problem with this individual and we gave the region the next evaluation period to resolve it. They were unable to resolve it favorably.

Mr. SIKORSKI. During that time, 39,828 hours were charged to the taxpayers or to the Superfund.

Mr. LONGEST. I am not sure what you are referring to.

Mr. SIKORSKI. Mr. O'Connor says we have a handle on the management of these contracts.

Mr. LONGEST. I think we do, yes, but I am not saying that we do not have any problems. I am not saying we do not have other areas that need to be corrected. We do, and we are continuing to work on it. But I am saying——

Mr. SIKORSKI. You are not bothered by this?

Mr. LONGEST. I am bothered by it.

Mr. SIKORSKI. You are not bothered by the fact that NUS got these performance awards, these merit awards?

Mr. LONGEST. I am not bothered by the merit awards that they got for good work, and the way the performance evaluation board is set up, that is what they are rewarded for—good work.

I think the positive result that came out of this, is that a contractor employee was removed within the first year——

Mr. SIKORSKI. Are we not talking about the same contractor, when we are talking about the FIT team, the teams up in Massachusetts?

Mr. LONGEST. Yes.

Mr. SIKORSKI. The same contractor?

Mr. LONGEST. Yes. Region 1 and 2 were the two issues that were brought up. Region 1 was the issue of what type of work they were performing. They were not performing field work, you mentioned. Region 2 was the issue with the employee who was not performing well, which was the FIT contractor's office manager.

Mr. SIKORSKI. Do we need more examples to convince anyone that there is a problem with this contract award system and its management?

Mr. LONGEST. Yes, sir. I think the issue of the contract award system—and Dave can speak to this, because I am just implementing it—but I think there is probably an honest difference of opinion here, maybe, between us and some of the auditors on the concept of the award fee.

Let me just say one other thing. We could also issue contracts with fixed fees. In other words, I believe the government——

Mr. SIKORSKI. Am I off base that we have cost plus a certain percentage, plus an award fee? And we are talking about an award fee. Are we off?

Mr. LONGEST. Cost plus award fee.

Mr. SIKORSKI. And the award fee here went for service above average, or for performance?

Mr. LONGEST. Yes, sir.

Mr. SIKORSKI. You have two examples here, and you say your concept of the award fee is what?

Mr. LONGEST. The award fee is for doing work that is worthy of a fee, that covers the entire performance under the contract, which covers four regional offices and many tasks, not just those two instances in Region 1 and Region 2. I am saying the award was based on better than average work in other areas of the contract.

Mr. SIKORSKI. The $30 an hour is the cost of that person plus the overhead that the contractor puts in, plus a profit on their investment.

Mr. LONGEST. I do not believe that that includes any profit.

Mr. SIKORSKI. NUS Corporation did not live on $30,000 during that four months.

Mr. LONGEST. The cost—my understanding is that the cost is the cost of doing business, the salary, and it is all of the equipment, the rental, et cetera, that the contractor——

Mr. SIKORSKI. Paying for money?

Mr. LONGEST. No, sir. Government does not pay for interest charges.

Mr. O'CONNOR. Mr. Chairman, let me clarify that one point. In addition to the salary rates that we pay the individual, there are tacked onto that overhead rates, fringe benefit rates, et cetera, which are perfectly allowable.

Mr. SIKORSKI. I am not arguing about allowability. NUS Corporation, the people who own it, who run it, who invest in it, who decided to put their labor and love into it, did not take this $30,000 and mark it up as what they got paid for these three months.

There are payments built in, in terms of what you call cost, that are the actual cost, plus the cost of their labor, their love, their attention, their money. It sure as heck is.

Mr. O'CONNOR. The cost of money is not an allowable, indirect cost and federal cost, or cost plus principal. But your point is correct in the sense that we are paying for other things.

Mr. SIKORSKI. Overhead. Overhead is a different word for taking money and investing in equipment.

Mr. O'CONNOR. Well, overhead includes many things, including rent and utilities and office salaries and other things that are not charged directly.

Mr. SIKORSKI. And if they borrowed money to pay for those office salaries——

Mr. O'CONNOR. We do not allow the cost——

Mr. SIKORSKI. But you are paying for those office salaries, and it is a market rate. So these award fees are not the profit that is given to NUS.

Mr. O'CONNOR. I am not sure where your point is going to, Mr. Chairman.

Mr. SIKORSKI. I am not going anywhere, I am just asking a question.

Mr. O'CONNOR. Profit is not included in the rates we pay.

Mr. SIKORSKI. I just heard an expression that the award fee was the thing, the sole thing that this corporation got out of this con-

tract with the federal government for good work, for performance work in four regions, and my understanding of the situation is they took more into their little group just on the basis of the cost.

The cost part of the contract. That this award system is designed to do just that—award for above-standard performance; performance quickly done, done exceptionally well, whatever, as an incentive to continue that or to do better. Right?

Mr. O'CONNOR. That is correct, and I apologize if I am not following you very carefully, Mr. Chairman.

Mr. SIKORSKI. I just heard Mr. Longest tell me that this poor corporation would not have got anything out of this operation if it did not get an award fee, and it would not have had an incentive for continuing its good work elsewhere if it did not get an award fee of thirty grand every three months.

Mr. O'CONNOR. Of course not. Of course, overhead costs are reimbursable whether they get one dime of award fee.

Mr. SIKORSKI. Now, the award fee is just that. It is an award fee for good performance. Right?

Mr. O'CONNOR. Yes. I think the point that I am finding confusing——

Mr. SIKORSKI. The point is, we have two instances, and my question is, do we have to have more instances before this award fee reflects what is going on in the field?

Mr. O'CONNOR. I think the point we wanted to make is that——

Mr. SIKORSKI. I would appreciate an answer.

Mr. O'CONNOR. We do not need more incidents to know that there are weaknesses in the system, if that answers your question, Mr. Chairman. The point is, we give a zero fee.

Mr. SIKORSKI. I do not think that is Mr. Longest's answer. He said that his concept of this award fee is consistent with what happened in the NUS situation. Is that not right, Mr. Longest?

Mr. LONGEST. I think that is correct in the sense that——

Mr. SIKORSKI. You are not bothered by this?

Mr. LONGEST. I am not bothered by the award fee for the contract covering performance in four regions. I would have been bothered if they had gotten an award fee for work done by the individual who was not performing adequately.

Mr. SIKORSKI. You are making an assumption. Now, do you know if the record supports that? Do you know whether they took into consideration this problem?

Mr. LONGEST. I do not know for a fact.

Mr. SIKORSKI. You are just making an assumption.

Mr. LONGEST. I am making an assumption based on the fact that we have an award fee board which takes into consideration all of these. We could go back——

Mr. SIKORSKI. Did you hear the Inspector General just now?

Mr. LONGEST. Yes, sir.

Mr. SIKORSKI. They said they had real problems with the award fee system. That is my point. If you want to know what the point is, we just heard all kinds of problems. Now I am hearing from you that there are not any problems, that the system is working fine, and that NUS deserved this thirty grand at the end of each of these quarters—thirty-five grand, thirty-eight grand.

Mr. LONGEST. Based on their performance they were awarded fees for other good work, not for the work that was not done well.

Mr. SIKORSKI. Did you hear the Inspector General say that the system is not working?

Mr. LONGEST. Maybe we have an honest disagreement.

Mr. SIKORSKI. Do you have an honest disagreement?

Mr. LONGEST. Maybe we do. I would have to look at the facts that the Inspector General dealt with. The facts that I have say that it was fair, as the fee was awarded by the performance evaluation board.

Mr. SIKORSKI. And there is no need to reform the system?

Mr. LONGEST. When you say no need to reform the system, this was the first year of the contract——

Mr. SIKORSKI. If it ain't broke, why fix it?

Mr. LONGEST. Yes, we need to improve the system.

Mr. SIKORSKI. You understand now, Mr. O'Connor, my confusion up here, and my point?

Mr. O'CONNOR. Some of it I do, yes.

Mr. SIKORSKI. You looked at the Inspector General's audits on this FIT system, and the two incidences that we talk about. The FIT teams not being in the field, having trouble, transferring over to another project, losing their people, having to do mock exercises. The NUS evaluation in another region, repeated problems. Still there are merit awards.

Mr. O'CONNOR. I think the system has weaknesses, and there are steps being taken, or have already been taken, to deal with some of those. Now, I hear a number of things that I have heard for quite some time. It is disturbing when award fee decisions, for example, are not documented so that an auditor coming in could understand the basis for them, and I think in some cases maybe we need to do a better job of documenting that.

One of the big problems we have had on these lengthy projects is, you may think early on that the work is going perfectly well, and an award fee is given accordingly. Later on you find out that you have a disaster on your hands, or it is not good.

Mr. SIKORSKI. I can understand that.

Mr. O'CONNOR. What we have done to correct that is to put into place procedures that allow us to go back and reassess that, and conceptually if we had given that fee early on and a year later when the project is finished it comes to light for reasons that were not seen earlier that this was not done well, then we have the ability to go back and readjust the fee.

Mr. SIKORSKI. That is not the case here.

Mr. O'CONNOR. No, it was not.

Mr. SIKORSKI. You had a point there, Mr. Longest. Do you have the documentation for these award fees on the quarterly basis that were given to NUS?

Mr. LONGEST. Yes, we have them.

Mr. SIKORSKI. Would you provide them?

Mr. LONGEST. Yes, sir.

Mr. SIKORSKI. Do they document what you are telling us here today that there was exceptional work elsewhere?

Mr. LONGEST. Yes, sir. The award board documents their decision for the award fee, and I can provide that to you.

Mr. SIKORSKI. Mr. O'Connor, did you want to finish?

Mr. O'CONNOR. It may be redundant to state it at this point, but one of the points you were trying to get across earlier is that there may be a large number of projects evaluated, and some of those may earn zero fee, others may have been done very well so that the contractor will get some fee.

Mr. SIKORSKI. Let me turn to the IG audit of the TAT contract, the technical assistance contract with Roy F. Weston, Inc. It found that the EPA violated the Federal Acquisition Regulations by using contractor staff for support and personal services.

During their review, the IG found the Weston employees furnished routine administrative services in EPA's Region 3 remedial response center under EPA supervision while using the EPA equipment working alongside EPA employees.

During discussions between the IG's auditors and the Agency's deputy project officers, auditors were told that it was necessary to use contract personnel in the center due to a shortage of EPA staff.

Some of the functions which contractor personnel performed included organizing files and answering the telephone. The IG's report indicates that these contractor personnel were individuals with technical expertise who were being paid an average of $30.68 an hour. Why does the Agency not request additional personnel?

Mr. LONGEST. Again, this was during that period of time of the build-up within the Agency, after the passage, or the reauthorization of CERCLA, the SARA Act. This audit took place during that same period of time the build-up was taking place. But I agree, these employees should not have been performing the type of functions I am hearing.

Mr. SIKORSKI. You are telling me there are no contract employees currently performing these services for EPA?

Mr. LONGEST. It is my understanding that they have switched to——

Mr. SIKORSKI. Not here, in the EPA. You will not find contract employees answering phones or doing file work or clerical work.

Mr. LONGEST. We have different types of support contracts. What is referred to as the Hotline for Superfund and RCRA where people can call in, is a contract supported function. So there are situations like that. This issue, as I understand we had contract people supposedly working directly for an EPA supervisor.

Mr. SIKORSKI. You say it is not happening anywhere else?

Mr. LONGEST. It should not be.

Mr. SIKORSKI. Well, it should not be, but are you saying it is not?

Mr. LONGEST. There are thousands of people out there, Mr. Chairman. I cannot vouch for everyone. But it should not be. We have made it clear that they should not be doing it.

Mr. SIKORSKI. I serve on the Health and the Environment Subcommittee of Energy and Commerce, and I serve on the Oversight and Investigation Subcommittee of Energy and Commerce. I have for over six years now.

You and I, all of us know that the EPA has a laundry list of responsibilities and duties it is charged under its statute to perform, and it is behind in a whole bunch of them. We also know that EPA personnel, God love 'em for staying there and doing the work under tough circumstances, are dedicated. You two are included in

that, and this might be a tough circumstance for you and I apologize for adding to it, but it is a way of going out, of getting some of the issues resolved and it is my responsibility to do these things as well.

But we know that EPA cannot perform with its staff basic support services and do all these other things it is doing, and that is how contract personnel get involved in doing these things. It is quick fix under tough circumstance, and I want to be convinced that this instance I just talked about with the Weston contract in this response center is not happening elsewhere right now.

Mr. O'CONNOR. I think a distinction needs to be made. That type of service may be permitted if it is handled properly as far as whether it is being used in a personal services situation.

Again, there are thousands of people so I cannot sit here and swear to you, Mr. Chairman, that somebody is not acting improperly out there, but—while the activities, answering the phone and providing other support functions are proper activities under procurement law and there may be proper contracts out there for them, that does not excuse anyone using contractors in a personal services situation.

Mr. LONGEST. I think that is an important point, because some of our phone response work is for reporting emergency situations, and you need more than a clerk, so to speak, answering the phone. Someone that understands what is going on and can respond.

That characterization, however, I do not say that that situation was appropriate, because that implied they were doing file duties and so forth. I am not saying that is right. I am just agreeing with Dave that there are instances where it is perfectly proper for a contractor to be answering the phone and that they should be technical people.

Mr. SIKORSKI. We will have some testimony—and we are hearing a lot about employees who are stretched to a point that the Agency is underfunded, understaffed. All notwithstanding the grand environmental thrust of the budget in the inaugural address. But there is no more staff as I recall, looking at the EPA budget request, to handle the things that are going on now, and not all the additional responsibilities have been attached.

Mr. Longest, you said in your testimony that much of the Superfund program must necessarily be implemented through resources allocated by the budget process and the program was initially geared for a short term. The Superfund program has been around for almost a decade now.

All indications are that it will unfortunately be with us for several more decades. Given this fact, would not the agency benefit by institutionalizing the program and putting in-house civil service people into a lot of those jobs?

Mr. LONGEST. That is a difficult one for me to answer, as you would understand. As a manager of the Superfund program I have to manage the resources that I am given through the budget process.

Mr. SIKORSKI. But you raised the explanation of how we got to this point of contracting being the major component of Superfund.

Mr. LONGEST. That is right.

Mr. SIKORSKI. You said it is because it was a short-term thing. My point is, it is not short term any more. We know we are going to have Superfund for a long time. Is it not time we treated it like the function of the federal government that it actually is?

Mr. LONGEST. That is something that has to be taken care of in the budget process. There have been increased dollars and personnel in the Superfund program. Just in the three years I have been here, there have been significant increases in the number of people in the program.

Mr. SIKORSKI. The Agency has recently started to award ARC contracts which are 10 year contracts, not very short term, each having a potential value in the millions of dollars. These contractors are also cost-plus-award-fee type contracts.

Given the problems we have already identified with the Agency's administration of the award system and the fact that the original need for this type of contract, namely to provide the contractor with an incentive to perform quality work in a timely fashion, does not seem to be working, how can the Agency justify the use of this type of contract in this new ARC program?

Mr. LONGEST. Two things. One concept behind the ARCs contract is that the project officer as well as the contracting officers will be in the regions closer to the work, rather than run out of headquarters. So this is an incentive and it also puts the authority and responsibility out in the regional office where it should be, and we should get better performance.

The second thought is that the awards that go to the ARCs contractors will be judged by people out in the regional offices who are responsible for these contracts, so they are closer to the work that is being done. I believe that the contractors also will be more responsive to those people since they are closer to them. They are not looking to someone in Washington. They are right there on the scene with them.

Mr. SIKORSKI. So the award system is necessary to that? I do not disagree with your philosophy there, but I am just wondering how the award fee, especially as we have seen its administration, or problems with its administration, relates to that concept.

Mr. LONGEST. It is based on performance. I think the issue is——

Mr. SIKORSKI. Well, the people have to be out close to the problems, and the people in the trenches. You do not need an award system to do that.

Mr. LONGEST. But you need some way to judge contractor performance. They, the contractors. How well they are performing. I feel the contractor needs an incentive to do a better job. We are trying to provide through this contract mechanism the incentive for them to do a better job. We are also trying to provide the authority and the responsibility in the region, rather than in Washington.

Mr. SIKORSKI. I just do not understand the difference between writing a contract that requires them to perform on time, perform services close to the problems, be responsive to those in the trenches, and pay them for that, and not pay them if they do not perform that. Why do you need another award on top of that? I guess that is the difference between our philosophies on the system.

I know that neither of you touched upon the issue of contractor indemnification. I think we talked about it a little bit earlier with the Inspector General and I understand the GAO is currently preparing a report on this issue as mandated by the SARA Amendment.

But under the Superfund statute, if Superfund response action contractors are unable to obtain adequate liability insurance to protect themselves against claims of negligence that could be brought against them based on their clean-up involvement, they can be identified for such damages from the Superfund trust fund. Am I right so far?

Mr. LOWRANCE. Yes, sir.

Mr. SIKORSKI. Now, although the Agency is attempting to revise its current guidelines on indemnification under SARA, I am concerned that language in the Agency's model indemnification agreement places virtually no limit on the amount of the trust fund money that can be paid for negligence claims.

The language states, "Reimbursement for any liabilities under this contract clause will not exceed appropriations available from CERCLA's Hazardous Substance Superfund except to the extent that Congress may make appropriations to specifically fund any deficiencies." The agreement also states that subcontractors may be indemnified too, with prior written approval of the contracting officer.

What all this means is that the trust fund could be wiped out by a contractor's negligence, or certainly the trust fund is responsible for a contractor's negligence. Now, given EPA's reported shortage of experienced staff to supervise and evaluate the work of these contractors, and we have heard it, is it possible that substandard contractor work could go undetected and then later on the government would be responsible for indemnifying contractors for damages brought by third parties caused by inadequate clean-ups?

Mr. LOWRANCE. The answer is yes, that is possible. The overall issue of indemnification has not been resolved. The Agency was charged with coming up with an indemnification policy. It has not been completed yet. That particular function is not in my office but it is under the same Assistant Administrator that I work for, and I know that they are working on that now. I could provide for the record the status of the indemnification policy. I do not know it right now.

Mr. SIKORSKI. What we are interested in is what happens under the system of huge reliance on contractors, problems with following up on their subcontractors—and we are talking about hundreds of millions of dollars—and a system that has turned out at least instances—and the IG and the GAO, their analysis is that it is more than isolated instances—where there is not the kind of contract management that should exist.

These contractors can be performing substandard or poor performance, and there are instances that they have, and are getting paid, maybe getting paid plus an award, and then the same pot that paid them for substandard performance is now liable for that substandard performance that the contractors got paid for performing in the first place.

I think that is unacceptable, and it also is aggravated by my understanding that the Agency is not permitted to do background checks on contractors beyond the information provided for by the contractor in the proposed package. Is that correct?

Mr. O'CONNOR. The evaluation of a proposal, Mr. Chairman, that is the basis for selecting a contractor, is confined as we say in the procurement world, to the four corners of the proposal. However, the contracting officer still has responsibility to ensure that we are dealing with a responsible contractor and yes, we do have the ability to look at their financial status to make sure that they are a viable, financially viable firm, and for other reasons that we may want to look at.

I think what you are referring to though is, in the actual rating of the proposal we do not take into consideration other information about the firm that somebody on the evaluation panel may be aware of.

Mr. SIKORSKI. I am concerned about the viability of that fund because we are so contractor-dependent, because we are restricted in reviews. The conflict of interest system is set up on a certification honor system. The review of the contractors is limited to the application and the supporting documents.

The capacity of these project officers to do their job within their current salaries, making sacrifices, being pressed beyond any human limitations to do all kinds of work with time lines and other things coming down on them, with the kinds of problems that have been identified by the GAO and the Inspector General. We have got some serious problems here.

The GAO says the EPA is heavily contract-dependent, emphasizes speed and flexibility at the expense of quality, continually experiences difficulties in contractor management oversight, especially in the oversight of subcontractors and the award fee system.

EPA has not challenged increased costs from inadequate contractors, has awarded big performance fees to contractors who have done substandard work; have not established subcontractor management and awards system that can be depended upon.

The IG says EPA is awarding bonus fees on the basis of incomplete data, on work that is clearly substandard. The EPA is using contractor personnel to perform administrative functions at a higher price than civil servants. In the RCRA program the Agency has seemingly lost control of its contractors, paying for unauthorized work initiated by the contractors themselves.

Then under the indemnification system, the same fund that pays for this system will pay for the deficiencies in that system. We are going to return to that later on. Mr. O'Connor, do you have any comments you want to make at this point?

Mr. O'CONNOR. No sir, I do not.

Mr. SIKORSKI. Mr. Longest, do you have any comments you want to make at this point?

Mr. LONGEST. I would just like to reiterate the point that I came to Superfund three years ago. I have spent a great deal of effort looking at the contract management system within Superfund. We have undertaken a number of initiatives. They have not been completed. We are spending time talking to our staff about ethics as well as training our staff regarding contract management, and we

will continue to do that. There are some problems in the program, we recognize that.

It has been a difficult period of gearing up to increase resources, both EPA personnel and contract personnel over the last two-year period of time. We feel we are on the right track. We admit that there are problems and we will work very hard to correct those problems.

The last point I would just like to make is that we would be more than happy to work with your staff and explain the contract award fee system. From the testimony I have heard and some of the questions, I feel that there is some misunderstanding and there are also some honest differences of opinion on the award fee system, and we would be happy to spend some time explaining, showing exactly what took place on this particular FIT contract and answer any other questions you or your staff may have regarding the award fee system.

Mr. SIKORSKI. I think there is a difference of opinion and there is a difference in the concept. The GAO and the Inspector General has provided us with data in terms of what strikes our eyes as inappropriate award systems but do not bother you, and apparently we need to look more at the facts in those circumstances.

But you have to understand that if these corporations, these contractors, with $125 million, $120 million, contracts do not get $30,000 at the end of a three month period because they goofed up are not going to go belly-up.

They are making a lot of money, several millions of dollars in that contract system, and we have testimony from the Inspector General and from the GAO, repeated instances where there is substandard work being performed and the contractor comes away with an award that is supposed to be reserved for above-average performance.

So apparently the philosophy is that this is something that the contractor deserves and needs to continue on in this contract. We think it should be for an award if it is at all, for a high standard of performance.

I want to thank both of you for your assistance. It has been a tough hour for you and for us as well, and at the same time you have been very helpful to the Subcommittee and I think you deserve praise for trying to make heads out of the system. I look forward to your continued cooperation with the Subcommittee, and working with you to better the system. Thank you.

Our last panel consists of two witnesses. The first, Mr. J. William Hirzy, is the president of Local 2050 of the National Federation of Federal Employees, which represents employees at the EPA's headquarters here in Washington, and it might be helpful for the EPA people to stay for this last panel if they can, and Mr. Fortuna is the Executive Director of Hazardous Waste Treatment Council, a Washington-based trade association representing commercial hazardous waste treatment firms.

The firms belonging to the council share a commitment to managing hazardous waste through the primary use of treatment technology and the restricted use of land disposal, and I think, having read their testimony last night, that it is valuable and somewhat a

divergence from some of the testimony we have heard this morning.

Mr. Hirzy, why do you not begin. We thank you for your participation and ask for your testimony at this point. I think you are well within the time limit, so you can read or summarize, however you like.

STATEMENT OF J. WILLIAM HIRZY, PRESIDENT, LOCAL 2050, NATIONAL FEDERATION OF FEDERAL EMPLOYEES, ACCOMPANIED BY RUFUS MORRISON, SENIOR VICE PRESIDENT OF LOCAL 2050

Mr. HIRZY. I think I would like to read, Mr. Chairman. Thank you very much for this opportunity to testify. Accompanying me, by the way, is Dr. Rufus Morrison, who is senior vice president of our Local.

Our Local represents the 1,200 or so professional employees at the headquarters of the Environmental Protection Agency here in Washington. I would like to give you the Union's assessment of the effects of the present contracting-out policies on the employees' morale and the efficiency of the Civil Service in carrying out what we perceive to be the mission of the Agency.

I will draw heavily in this testimony on the work of my predecessor, Bill Coniglio, who about nine months ago completed a study of staffing at EPA headquarters and its relationship to EPA's ability to accomplish its assigned mission with the staff resources that are available.

The issue of contracting out EPA's scientific and technical work is a serious morale problem, and we think it also affects EPA's ability to do the job the public expects of the Agency. Exemplary of this latter, you may have noticed the B.C. comic strip that Johnny Hart did last December on EPA. In that strip a baby ant asked its daddy, "What's an example of environmental waste, dad?" The reply was, "The EPA".

The environmental organizations accuse us of bureaucratic senescence, voodoo toxicology, and failure of spirit, and Richard Dowd, writing in the December issue of "Environmental Science and Technology" said, "Political stalemates, institutional barriers and resource constraints have combined to make the environmental regulatory system unresponsive, even unworkable."

None of us signs on at EPA with the expectation of being pilloried in these ways. Rather, we expect to do a professional job of executing the laws you in Congress have passed, with the President's concurrence, to protect human health and the environment. But Mr. Dowd has hit the nail right on the head.

Might I point out here, it is not just contracting out that is the problem, it is the three points that Mr. Dowd makes in his article: institutional barriers, resource constraints and political stalemates.

EPA has become a different organization from the one that was created nearly two decades ago to address the Nation's environmental problems. No longer is it an agency that uses the knowledge and experience of the skilled, broadly-based, scientific and technical staff to identify and solve environmental problems.

It has largely become a management and contract support organization that operates in a reactive rather than a proactive fashion in dealing with environmental problems. I can give you some examples of that, if you would like, later on when I finish.

No longer are scientists encouraged to go out and identify and then solve environmental problems. Rather, they are instructed by management to await a pronouncement of the existence of a problem from you in Congress or citizens groups outraged at toxic insults to their communities. They are not encouraged to publish their work and gain the stature among peers that is necessary to advance their careers and in so doing bring additional credibility to the Agency's work.

This shift in philosophy has been implemented to a great degree by a conscious or unconscious drive to eliminate senior scientific and technical people from the career staff, and to buy science from the private sector instead. Sometimes science is purchased from other agencies.

An example of this which illustrates not only the morale but the efficiency of the service problems is the toxicological profile program under the Superfund Amendments and Reauthorization Act. It was perceived by Congress that EPA did not have the scientific personnel, or perhaps the scientific standing, to write these profiles, and as a result the Agency for Toxic Substances and Disease Registry was given the job instead of EPA.

Then because ATSDR in fact did not have the resources itself to do the job, EPA was brought back into the picture. But now EPA's job was not to use high-level scientific expertise to address an environmental problem. Instead, EPA was to manage contracts let to the private sector to do the work that EPA should have been doing as a matter of course.

What I mean by that is, had EPA been operating as a science-based, mission-oriented agency, encouraging and developing the maintenance of senior-level scientific personnel in the Civil Service, toxicological profiles could literally have been taken off the shelf, turned out by resident EPA Civil Service staff scientists who were experts in the chemicals of concern, and we think more quickly, more cheaply, and significantly with the public interest as a paramount consideration. What has happened instead is that the EPA staff have gotten the message loud and clear that "you are not worthy to do this kind of scientific work."

Another example of contracting out that has recently been brought to the Union's attention is a contract that EPA has with the Cadmus Group. This contract permits contracting out virtually every single function in the Office of Toxic Substances except that of the office director. The contractor is authorized to do everything from health effects, exposure and risk assessments to layout of regulatory options, to response to public comments on proposed rules. The only job left for a Civil Service person is to select a regulatory option, a job reserved for the office director. No staff needed, thank you very much.

This Agency's mission is one of protecting humanity's ability to live on the planet, and it is inextricably bound up in science. Mr. Chairman, there are no senior-level—and I mean by that, GS–15 level—ecologists on the staff at EPA, nor plant physiology and pa-

thology experts, nor wild life biologists and zoologists, nor fishery biology, nor soil science and geology experts, nor oceanography or immunology experts, and you are looking at the one and only GS-15 level chemist in all of EPA headquarters.

This Union sees a dark future for the Agency unless the trend toward ever more contracting out of Civil Service jobs is reversed and the public's interest in environmental protection is again entrusted to sworn-to-duty Civil Servants. That dark future is one in which political appointees and their legal pathfinders decide on a course of action, and then go to the private sector to buy "scientific cover" for their decision, and EPA scientists, which in reality become merely technically literate clerks, are relegated to the job of managing contracts to provide the "scientific cover" for purely partisan political decisions.

Let me assure you, Mr. Chairman, that the staff Civil Service professionals at EPA recognize their limited Constitutional role as advisors to those who hold elective or appointive office under our democratic government. We have no quarrel with that role. We simply want to be able to do the best possible professional job, as members of the Civil Service, in that role.

Mr. Chairman, if the Congress wants the Nation's environmental programs to be run as exclusively partisan political exercises, and if the public thinks that "EPA as environmental waste" is a function of too much science and engineering professionalism at EPA, and if environmental organizations prefer to trust political appointees, their legal advisors and the contractors in the private sector to restore the spirit and zeal of EPA in faithfully executing environmental laws, then by all means contract out the whole of EPA's science function.

If, on the other hand, Congress and the public want apolitical administration of environmental laws, if they want excellence in science and engineering to drive implementation of those laws, then EPA needs to reverse course and to send proposals for more contracting-out of our professional jobs to the destination they deserve—a Subtitle C landfill.

We urge you to ask our new Administrator, Bill Reilly, in whom we place high hopes, to conduct a full-scale study of the staff resources needed to do EPA's work with Civil Service professionals and to report the result to you and to us.

If I may add to my written testimony, as I said before, we think there are other factors involved in EPA's problems that include the way that the staff is organized and the way EPA operates and that attention must be paid to those factors as well.

Thank you. I will be happy to answer any questions.

Mr. SIKORSKI. Mr. Fortuna, you have a nice long statement that we will submit for the record that is valuable. We had a chance to look at it last night. We appreciate your highlighting these points, pointedly in some cases. Go ahead and use your time to summarize.

STATEMENT OF RICHARD C. FORTUNA, EXECUTIVE DIRECTOR, HAZARDOUS WASTE TREATMENT COUNCIL

Mr. FORTUNA. I am Richard Fortuna, Executive Director of the Hazard Waste Treatment Council. The Treatment Council is the

largest association representing clean-up firms, waste treatment companies, and equipment manufacturers. We have an emphasis on prevention and the institution of permanent remedies at Superfund sites.

I am here this morning, Mr. Chairman, to talk about a slightly different aspect of the role of contractors in the Nation's two hazardous waste programs—RCRA, the nation's preventive daily management program; and Superfund, the clean-up program.

My discussion will focus on the extent to which the current contracting system is impeding performance goals and provisions of the statutes Congress has enacted.

I think it is also important to examine the performance, or role, of this contracting system within the context of the current political leadership and policies that are being expressed by EPA in related rulemakings.

The principal observation we have to share with you this morning, Mr. Chairman, is that we think the problems with contractors fall into two broad categories. One is, are the contractors the problems themselves, or are they simply symptoms of a larger problem. It is our conclusion, that the larger problem is what Dr. Hirzy just discussed.

We simply do not have enough people to police the contractors with in-house expertise. We are witnessing a conscious policy decision to delegate the policy ratemaking role of government to contractors.

This is not a healthy situation when you have so much vital work of the Agency, be it in the RCRA program or Superfund program, being done solely or exclusively by outside contractors. We simply need to have the requisite number of experts within the Agency to maintain the integrity and independence of Federal decisions.

I would like to give you just a few brief examples this morning, Mr. Chairman, within both the RCRA and Superfund programs, of how the current contracting policies and procedures are impacting the overall goals and objectives of the statute.

I think the most significant of that within the RCRA program is the organic toxicity characteristic (OTC) rulemaking. Now that was a major new directive of the 1984 Amendment that was intended to bring in a wide range of organic waste—waste with solvents, pesticides, et cetera—under control of the RCRA, Subtitle C hazardous waste system, for the first time.

That was perceived or identified as a major gap in the structure and coverage of the hazardous waste regulatory system. EPA had originally proposed that rule in 1986, reproposed it in 1987, and most recently reproposed it again in August of 1988. My comments will focus specifically on the most recent reproposal of this vital rulemaking.

We and several members of the environmental community attempted to examine the impact of EPA's changed assumptions model, and environmental fate and transport mechanisms on the levels at which compounds are regulated.

The rulemaking, it would be fair to say, is probably one of the five or six most significant rulemakings ever issued by the Agency under RCRA, since for the first time hundreds, if not thousands, of

waste streams will either become regulated or exempted as a result of these determinations.

However, we ran into some significant roadblocks, to say the least, when we tried to procure from the Agency the requisite backup data to identify how the changed assumptions and modeling procedures affected the actual regulatory levels—which wastes are in and at what levels. Many vital pieces of information were lacking in the record. The elements of how the model worked or were put together were absent from the record.

Unlike previous proposals the Agency themselves fail to identify the quantitative relationship between the changed model and assumptions and their impact on the regulatory levels for these wastes. No one—and I repeat, no one—at EPA headquarters was able to tell us what the quantitative relationship was between their changed policy and assumptions and the impact that was going to have on who was regulated and who was not.

Despite several weeks of effort using our own outside modelers and the top expertise in the environmental community we were still not able to have a new computer program—that is, the new environmental fate and transport model—run and produce quantitative results that explained what the essentially environmental result was of these changed policies and assumptions.

We were ultimately referred to—guess who—the contractor. No one at EPA headquarters could articulate the relationships. We called the contractor, worked with the contractor feverishly in the last few days of the comment period, and the contractor finally just admitted that the publicly disseminated computer program that was intended to tell us what the regulatory impact was, admitted that the program did not work.

That was the end of it. We could never determine the impact of the changed policy and assumptions.

Now, I think it is important to reemphasize that this is a major rulemaking. There are thousands of waste streams out there that contain organic constituents that are not subject to current RCRA Subtitle C coverage because they are not specifically listed—that is, the process from which they come is not named in the Federal Register—or because the other waste characteristics—that is, the inherent properties, of ignitability, reactivity corrosivity and toxicity—do not cover many of the organic wastes.

It is now five years since the issuance of the 1984 Amendment, and we still do not have this rulemaking issued, I also think it is important to note for the committee's purposes and for perhaps other investigations that this rulemaking continues to rattle around between EPA and OMB.

It is, at least according to the reports in the trade press, emasculated on a weekly basis in terms of, it started out with 46 constituents that were going to be regulated. It was down to 38. It is now supposedly down to 31.

The rationales being provided for why the constituents should be dropped off the list appear to be coming from some of the Agency's own contractors.

I believe what we are witnessing a form of political back-calculation of which industries are going to be regulated based on how they see the regulatory levels coming out. Some people may not

like to see this particular compound regulated so it is dropped off the list so industry X can be "spared" from having to manage that waste under Subtitle C.

One other aspect of Agency rule-making that I think has been adversely affected due to the lack of in-house personnel and excessive reliance on contractors is another major program, the Land Disposal Ban Program. Under the Land Disposal Ban Program the Agency has accepted data developed by firms or regulated entities to assist in establishing treatment standards for a wide range of wastes prior to land disposal.

Many of our member firms, as well as firms outside of our group, have helped in developing this data and submitted it for the Agency's review.

On several occasions we know that the data that our members have submitted and had spent a considerable amount of resources on have simply been turned over to a contractor and basically fallen into a black hole.

There is nobody at EPA who has in many cases to review much of the data that our members have assembled for the purposes of establishing these very critical treatment standards. Many of the affected waste streams involve significant volumes of waste.

Lastly, Mr. Chairman, under RCRA, I would like to simply point out that I think it bears further investigation by this Committee as to what extent the Agency is spending money on contract functions that bear no relationship to statutory mandates to the ignorance, if you will, of many outstanding statutory requirements.

I would like to reemphasize the point that the Inspector General made. What we see are many self-initiated projects either through the contractors or through EPA staff, EPA management, that bear no relationship whatsoever to the statute, while many vital statutory requirements to either develop the organic toxicity characteristic, list used oil, regulate mining waste, regulate pesticide waste, go unattended.

What I would like to do, Mr. Chairman, is submit, for purposes of summary, a list of the many statutarily mandated rule-makings for which the Agency has not allocated one cent of resources, versus those that the Agency has allocated dollars that are not statutory requirements.

Turning to Superfund, we see, frankly, the same problem and a different problem. I am loath to talk about Superfund, because I really think it is nothing more than the incredible unaccountable program. Every time we look at some new aspect of the program it leads to nothing but greater frustration, and frankly anger.

But again, I think the principal culprit here is that we do not have enough in-house people, either at EPA headquarters or at the regions, who are able to control contractors in general, but also critique their work and make sure that either work products are of substantial quality or to make sure that we are not contracting out vital policymaking functions.

It is important to contrast RCRA from Superfund. In evaluating the impact of contractors on the Superfund program, an additional factor must be considered—the leadership vacuum within that Superfund program.

In fact, in the recently released OTA report, Dr. Porter was quoted discussing the merits of the new ARCs concept, the new contract management for the people who do the remedial investigation feasibility studies and remedy selection, saying this new system of contracting was going to "avoid the need, or eliminate the need" for EPA to "pull all the pieces together".

In other words, Dr. Porter, at least for his money, was more than comfortable having contractors supervising contractors. This, I think, is the essence of the problem. I think we have a leadership within this program that is more than happy to essentially delegate out as much of the program as possible—to share the blame, if you will. I think it may not be a conscious effort but I think it is an insidious element of excessive reliance on contractors to be able to share the blame, as opposed to shoulder it when more of the work is done in-house.

Mr. Chairman, for the purpose of time I have identified in our statement a number of specific areas where the Agency's lack of in-house talent has led to inexcusable errors within the program.

What I would like to do by way of summary is to point out one area that I think bears further investigation and attention in the immediate future for this committee; the area of the use of ARCs contractors who are becoming vertically integrated to do both remake selection and remedial action.

We have a situation emerging where many of the same companies that do the remedial investigation—the study, the data collection, and recommend remedies—are the same companies that are now developing the capability to implement specific types of remedies.

By itself, this is not evil, although again the OTA report issued earlier last month identified a specific example of where a given ARCs contractor selected a remedy that relied on one of his own subsidiaries to implement it. That is just a clear and inexcusable, unacceptable conflict of interest.

The committee needs to be aware of the extent to which, if every ARCs contractor becomes vertically integrated, and both choose remedies as well as implement remedies, you set up a potential situation of insidious log-rolling or horse-trading among ARC contractors to respectively select another's technologies in given regions, that is the type of thing that the committee certainly has to be aware of and pay close attention to.

Mr. Chairman, I have a series of recommendations, many of which I think are fairly obvious, I have touched on in the testimony. I would be happy to amplify on those within the questions.

[The statement of Richard C. Fortuna follows:]

TESTIMONY

OF

RICHARD C. FORTUNA

EXECUTIVE DIRECTOR

HAZARDOUS WASTE TREATMENT COUNCIL

IMPACT OF CONTRACTORS ON EPA'S HAZARDOUS WASTE PROGRAMS

BEFORE

HOUSE SUBCOMMITTEE ON CIVIL SERVICE

POST OFFICE AND CIVIL SERVICE COMMITTEE

U.S. CONGRESS

THE HONORABLE GERRY SIKORSKI, CHAIRMAN

FEBRUARY 23, 1989

Mr. Chairman, Congressman Burton, Members of the Committee, I appreciate the opportunity to address the Committee this morning on the important matter of the appropriate role of contractors in the Agency's hazardous waste management programs: the Resource Conservation and Recovery Act (RCRA) governing daily hazardous waste management and the Superfund cleanup program. My testimony will focus on the role of and our experience with contracting policies, procedures, and decisions under both of these programs, and will specifically examine the extent to which contractors are the problem, or merely a symptom of a larger one. The Council believes this hearing is timely because many of the problems with outside contractors are emerging rather than entrenched.

I. BACKGROUND ON THE COUNCIL

The Hazardous Waste Treatment Council is a national association of firms committed to the primary use of high-technology treatment and to the restricted use of land disposal in the management of hazardous waste. The Council is the largest organization to represent commercial hazardous waste treatment, management firms and equipment manufacturers. The Council membership is engaged in the thermal destruction of hazardous waste through the use of incineration, cement kilns, wet oxidation and pyrolysis; treatment and management through the use of reclamation, solidification, fixation, neutralization, chemical and biological destruction and treatment; remedial and emergency response, and the appropriate use of land disposal, including deepwell injection, subject to certain restrictions and necessary pretreatment. In short, the Council represents management firms, cleanup contractors and equipment manufacturers that manage other people's waste with an emphasis on permanence and prevention.

II. OVERVIEW OF TESTIMONY

The problems with the use or excessive reliance on outside contractors fall into two major categories: those where contractors are the problems (i.e., conflict of interest, fraud, ignorance), and those where contractors are a symptom of a larger problem (i.e., inadequate staffing and delegation of policy making responsibilities to contractors). The vast majority of the problems that the Council has identified reflect symptoms of a larger problem rather than an inherent problems or actual misconduct. The Agency simply does not have enough qualified personnel within the Agency to either adequately challenge and/or control contractor activities be it in the RCRA or Superfund programs. A conscious effort to artificially restrain the number if in-house federal EPA employees has virtually bankrupted Agency manpower and stretched its in-house talent to the breaking point. As a consequence, the Agency has lost effective control of

several RCRA rulemaking processes and is unable to critique or challenge contractor recommendations in the Superfund program. In addition to ensuring the necessary in-house expertise and staff, the Congress also must closely oversee the emergence of integrated cleanup contractors that both recommend cleanup remedies to the government and own or market specific cleanup technologies.

III. RCRA PROGRAM CONTRACTING PROBLEMS

A. Background

The Resource Conservation and Recovery Act (RCRA) is the nation's basic hazardous waste management law governing daily management of hazardous wastes. It is intended to prevent the creation of future Superfund sites through a series of stringent standards on the land disposal, treatment, storage, transportation and generation of hazardous wastes. The 1984 RCRA reforms emphasize the need to restrict all forms of hazardous waste land disposal, and have triggered the most significant transformations in hazardous waste management practices that any nation has ever witnessed. This transition has required a series of rulemaking efforts virtually unprecedented in the history of environmental programs. Moreover, as interest in solid waste management and infectious waste issues grow, so will the need for yet additional regulatory determinations. However, the Agency's overall personnel level for these activities has remained static since 1984 in the face of an ever increasing regulatory load.

Partly as a coping mechanism but also reflecting the Administration's unwillingness to request additional personnel to staff these vital functions, the Agency has turned to outside contractors with increasing frequency. Program managers have found it easier to ask for dollars than people. As a result, the Agency has effectively lost control of several vital rulemaking areas. The situations identified below reflect ways in which Agency control of the rulemaking process can be compromised due to the lack of sufficient qualified Agency personnel to evaluate contractor work products, and control policymaking.

B. The Organic Toxicity Characteristic; Bringing New Wastes Under RCRA

One of the most significant new directives of the 1984 RCRA amendments was to develop a new characteristic of hazardous waste that identifies those wastes that are hazardous based on the potential to release organic constituents into the environment (i.e., solvents, pesticide residues). This was deemed to be one of the major failings of the previous RCRA system due to the relatively few organic wastes that were separately listed under RCRA. A specific test for the intrinsic property of toxicity (i.e., leachability) requires that all waste materials be tested

for the characteristic rather than merely regulating wastes from specific industrial process. The need to establish a characteristic (i.e., the organic toxicity characteristic-OTC) that tested for the potential to release organic wastes was deemed to be one of the highest priorities of the 1984 amendments and clearly represents one of the most significant rulemakings ever to be issued by the Agency, as it will affect hundreds if not thousands of previous unregulated.

The Agency originally proposed this rule in July, 1986 where they designated 48 compounds and their corresponding regulatory levels (i.e., the level of the organic constituent that if leached identified that particular waste stream as "hazardous"). As with previous characteristics, the regulatory levels were established using a series of reasonable worst case environmental fate, transport and modelling considerations.

Despite the original proposal in 1986 and a proposed revision in 1987, the Agency proposed yet additional changes to the environmental fate and transport model and assumptions. Unlike other rulemakings, however, the Agency failed to indicate how the changed model and assumptions affected the actual regulatory levels. Namely, did the changes in the assumptions and modeling procedures make this a more stringent or less stringent approach? Are the levels of waste constituents that are allowed to leach out of a waste identified as "hazardous" by the OTC either higher or lower than previously proposed.

These are vital questions to all concerned parties. In attempting to prepare comments on the Agency's changed assumptions and modeling procedures for the OTC, the Council and many other groups encountered roadblocks in analyzing the proposed changes that were most disturbing:

- Many pieces of vital information that served as the basis for the Agency's changed assumptions were not present in the rulemaking docket;
- The basic elements of how the model worked and how it differed from the previous approach to establishing the OTC were similarly absent;
- Unlike previous proposals on the OTC, the Agency failed to indicate the quantitative impact of the changed assumptions and modeling procedures on the regulatory levels. The changes in the regulatory levels have a dramatic impact on the volumes and types of wastestreams and units that will be affected and/or regulated under RCRA;

- o No one at EPA headquarters was able to tell us what the quantitative relationship was between the changed assumptions and the regulatory levels. Instead we were referred to the contractor himself regarding the most vital of questions; what are the new regulatory levels that result from the changed assumptions and model?;

- o Despite several weeks of effort using our own outside consultants and the most experienced modeling experts within the environmental community, neither we nor environmental groups were able to coax the new computer model to operate properly. Therefore we were unable to establish the impact of the changed assumptions and model;

- o The contractor finally admitted that the publicly disseminated computer program did not operate properly. To this day do not know what changes will occur in the regulatory levels as a result of the Agency's proposed rule.

The Agency's lack of in-house staff to oversee the contractor, to understand how the assumptions affect regulatory levels, and to know whether or not these new assumptions actually comport with statutory mandates have effectively precluded meaningful public oversight of this rulemaking. How can we, the environmental community or anyone in the regulated community adequately comment on the Agency's proposed rule when no one knows how the new model works or whether it works at all? This is perhaps the most dramatic case of where the Agency has lost control of the policymaking process and engaged in defacto policy delegation to an outside contractor. How can an Agency responsible for issuing one of the most major rules in the history of the RCRA program, refer inquiries on the impact of the model to outside parties?

C. Land Disposal Ban Program

The land disposal ban program represents another major reform of the 1984 amendments and perhaps one of the most aggressive environmental programs undertaken by the Agency during its history. While the program received an initial infusion of new staff in 1984 to deal with the new mandates, the program has remained static since that time and has not replaced many vital personnel. As a consequence, extensive data submissions by our members and other firms to establish the best demonstrated available technology (BDAT) standards for major metal-bearing

waste streams prior to land disposal were simply turned over to outside Agency contractors without the benefit of in-house Agency staff review, and subsequently were ignored. A program so vital as the land disposal ban program affecting such a wide range of generators, treaters and disposers must have the necessary staff to review data submissions and demand accountability from outside contractors. Just like the Marines, this program needs a few more good men and women. Many other case-specific tasks are being shunted aside or shuffled through the Agency due to the lack of staff including the review of treatability variances, and the review of requests for additional time extensions.

D. Self-Perpetuating Contract Missions

Perhaps one of the other more insidious problems of excessive reliance on outside contractors is that policy decisions and priorities become subtly driven by a self-fulfilling need to use program dollars that have been allocated for contractors irrespective of whether they bear any relationship to statutory mandates. For example, in the organic toxicity characteristic (OTC) example identified above, a full-scale revision to all of the Agency's waste identification and modelling procedures was spawned as a result of large mission contracts to outside contractors for related tasks. In addition to the most recent proposed revisions to the OTC, other recent proposal that have sought to establish: a new delisting procedure for wastewater lagoons that allow a more lenient approach to waste delistings; a more lenient approach to lagoons in general due to new modelling procedures and assumptions; an entirely new and highly complex approach to identifying whether or not a waste is hazardous based upon a combination of four factors: intrinsic properties, actual waste constituents, the location of the unit and the type of unit the waste is managed in. This four-sided analysis scheme would allow the same waste to be designated as both hazardous or non-hazardous depending solely upon factors such as location (i.e., urban or rural) rather than its pure potential for harm under a reasonable worst case, protective scenario. While this problem may also occur if the same dollars were simply allocated to in-house personnel, it is less likely to occur due to the ease with which one can initiate a study within a large mission support contract, and also due to the fact that contracting dollars may be lost if not used thereby prompting suggested policy revisions or contract missions irrespective of whether they comport with existing statutory mandates.

E. Allocation Of Contract Dollars For Discretionary v. Statutorily Mandated Actions

Lastly, the Committee should investigate the extent to which the Agency has committed contract dollars to projects that are discretionary, while at the same time ignoring or failing to fund

those functions mandated by the statute. There are dozens of waste streams and other activities in the waste listing and identification area mandated by the statute that have received no funding whatsoever, while activities that have no basis in the statute that have been funded to rather handsome levels. Did this come about as a result of the Agency's request, or were such projects initiated by suggestions from outside contractors?

In closing, the use of contractors in the RCRA program does not reflect improper behavior. Rather, the role of contractors in the RCRA program reads like a plot to over throw the government from within. The failure to request necessary staff to ensure independent, timely Agency decisions and to oversee contractors has resulted in the acceptance of work without critical evaluation, or even a basic understanding in certain situations.

IV. SUPERFUND CONTRACTING PROBLEMS

A. Contractor Use, Performance, And Contracting Procedures

Despite the continuing hope and promise of the Superfund program, it remains a distinct disappointment -- it is the incredible unaccountable program. In a previous report that we issued in conjunction with six of the nation's leading environmental groups, "Right Train, Wrong Track", we identified how a lack of leadership in the program has contributed to a decisionmaking process that effectively ignores all the major mandates of the 1986 SARA, and merely perpetuates the capping, closure, and temporary remedies of the past.

In the Superfund program as with RCRA the principle culprit is not the fact that contractors are used, but rather is largely due to insufficient numbers of qualified personnel at the Agency and its region to exert control. This lack of fundamental capability has been exacerbated by a total lack of leadership or direction from the top and an excessive emphasis on cost irrespective of permanence. In fact, Dr. Porter, the former Assistant Administrator, appeared quite comfortable in turning over as much of the program as possible over to outside contractors. Dr. Porter states that the new ARCS concept will eliminate EPA's need to "pull all the pieces together". In other words, contractors instead of government workers will be managing contractors.

Superfund due to its site-specific nature is inherently more sensitive to the nature of its leadership and the role of its contractors. Congress clearly stipulated that permanence and effectiveness of remedy took precedence over cost and that such permanence was to be achieved through the use of treatment technology to the maximum extent practicable. Absent people, absent leadership and given a contractor community that at times

is as ill-informed as EPA it is easy to see why this program is living hand to mouth. Massive amounts of dollars are being passed through the operations process with no real direction.

The impact of these two factors, lack of in-house personnel and, lack of overall program leadership are manifested at every level of program operations from the most mundane to the most meaningful:

- The Agency still cannot provide twenty-three of the FY '88 Records Of Decision for public inspection, many of which were signed in March of 1988, because many remain at the NTIS contractor's office;

- A 17% error rate in the simple arithmetic of the hazard ranking system (HRS), which determines whether or not a site is listed under the Superfund national priorities list;

- The use of ancient, overstated, treatment cost information, particularly for incineration, that also fails to reflect the economy as a scale that every contractor provides for larger jobs; and,

- The recent proposal in the national contingency plan that the land disposal ban standards of RCRA do not apply to any Superfund site unless it can be proved that the waste were placed at the site after 1980; an aborted reading of the statute if one ever existed.

Many of these malfunctions are precisely the type of things that contractors are supposed to prevent or the Agency is supposed to catch, and neither one is happening. We continue to plod along and muddle through.

We agree with OTA that the Superfund program has become a "captive" to the major consulting contractors, to the detriment of the program. While there may have been a need in the early days of Superfund for EPA to rely heavily on outside consultants to get the program off the ground, that day is over. The present need is for EPA to take Superfund back from the consultants. As presently administered, there are no economic incentives for consulting firms to move the Superfund program beyond more studies and into actual cleanups -- getting treatment equipment into the field to destroy toxic wastes. In fact, just the opposite is true. All the economic incentives built into Superfund consulting contracts tend to encourage more studies, more data-collection, more number crunching, which is how the consultants get paid, of course.

To reform the Superfund program, EPA must fundamentally change the role of these consultants, and increase the role of

EPA project managers. First, EPA must change the scope of work and payment schemes in the standard contracts. Most current contracts allow the consultants to basically do any work requested by a project manager and charge hours against the maximum funded amount of the contract. This creates an incentive for the consultant to suggest more data-collection and study in order to charge time against every allowable hour under the contract. Instead, ARCs contractors should be paid for specific tasks at a specific hourly rate up to a contract amount for each task. If not all tasks are requested by the project manager, or if the maximum amount for each task is not reached, no further monies are spent.

Superfund is always going to have a residual level of dissatisfaction given that problems are often complex, costly, and there are competing pressures both to achieve proper quality and to do so within the shortest period of time. Moreover, contractors will be required to not only do the actual work of cleanup, but also to assist the Agency in managing contracts and arraying various options to be considered. However, it is absolutely essential that this program have the ability to retain qualified people to manage contractors, and to be on the par with the inevitable challenges brought by PRP managed cleanups and the inherent desire to side-step statutory mandates in lieu of lowest possible cost.

B. ARCs Contractors Becoming Cleanup Contractors

Beyond simple manpower and capability shortages within the Agency, there is a growing and equally serious potential for conflicts of interest when ARCS contractors (i.e., those who manage the RI/FS, remedial design, treatability testing and recommend specific remedies) themselves have a financial interest in specific cleanup technologies and selected remedies. Several ARCs contractors also own their own cleanup firms market their own technologies or operate cleanup divisions. This raises the distinct potential for conflict of interest that reduce the scope of remedial technologies examined and bias the final cleanup decision. Certainly firms that conduct data gathering, options development and remedy selection work should not themselves be allowed to market or select one of their own technologies at that site or other sites in that region. As more and more ARCS contractors themselves begin to operate cleanup divisions or market their own technologies, increased oversight and scrutiny must be brought to bear to prevent horsetrading of remedy selections among ARCS contractors.

A perfect example of this occurred at the Brown Wood Preserving Superfund site in Florida identified in the OTA report. Other examples of this problem continue to be confronted and represents a growing yet preventable problem if proper oversight occurs.

V. CONCLUSIONS AND RECOMMENDATIONS

To the extent that the Agency's reliance on outside contractors is excessive, as manifested by delegation of policy decisions or failure to control to contracting process, it is a symptom of a larger problem -- the failure of the Agency to have independent expertise to use contractors appropriately, rather than to be used by them. The programs we are dealing with require specialized expertise and ability, not all of which cannot be in-house. The additional pressures on the Superfund program in particular for prompt response and quality cleanups in complex situations add to the difficulty of moving this program forward. However, we must recognize that neither the problems of daily waste management nor Superfund will go away by simply adding additional dollars or contractors. This is a problem we must prepare for over the longer term and not simply skip from one quick fix to another.

The Council believes that a number of mid-course corrections are necessary and that a number of danger signals in the water must be carefully monitored to ensure that the Agency and the statutes it is charged with implementing are facilitated by the Agency's use of contractors, rather than frustrated by them.

- First and foremost the Agency must add additional in-house personnel in both the RCRA and Superfund programs to ensure the independent integrity of decisions and requisite control over the contracting community. Unless the Agency itself is able to articulate the impact of their own proposed rules to the regulated community, and unless the Agency is able to challenge and verify information and data submitted to it under Superfund, the contracting community will increasingly control policy decisions that defy statutory mandates.

- The Agency should not use outside contractors for policy development tasks, and limit the use of outside contractors to assisting in program management, data collection and technical tasks that are not directly related to decisionmaking. This is particularly true where a contracting firm retains or does similar work for private clients that will be affected by its policy recommendations to the Agency.

- EPA should conduct a review, and report to Congress on revisions to the contracting

process needed to remove incentives and procedures that encourage over-reliance on consultants. The EPA reports should address work scope, performance evaluation, acceptance procedures, and payment terms that ensure objectivity, credibility, and value for outside consultant work.

- Due to the growing trend toward vertical integration by ARCs firms that are either marketing their own cleanup technologies or that have their own cleanup divisions, the Agency should ensure that the subsidiaries of ARCS contractors are not used at that same site or region. That is, an ARCS contractor cannot recommend his own technology at the same site. Even beyond this very obvious conflict, the Agency should examine and the Congress should monitor the extent to which ARCS contractors essentially trade remediation tasks or jobs among their fellow field services division. If an ARCS contractor is going to be involved in recommending remedies, serious questions are raised when he himself has an interest in specific technologies.

- The Congress should require that the Agency submit regular reports to justify the use of contractor resources based on the statutory mandates they are intended to support, and specifically identify when a contract is unrelated to a statutory requirement.

HSWA DEADLINES THAT HAVE BEEN SIGNIFICANTLY DELAYED OR IGNORED*

Regulation	RCRA Section	Statutory Deadline	Estimated Completion	Hammmer Provision
Listing/Identification				
Organic Toxicity Characteristic	3001(h)	11/08/86	3/89#	No
Characteristic for Carcinogens, etc.	3001(b)(1)	none	none	No
Revisions of Existing Toxicity Characteristics	3001(g)	03/08/87	3/89	No
Halogenated Dioxins/ Dibenzofurans	3001(e)	11/08/85	none	No
Chlorinated Aliphatics	3001(e)	02/08/86	8/89	No
Other Dioxins	3001(e)	02/08/86	8/89	No
Dimethyl Hydrazine	3001(e)	02/08/86	none	No
Organo Bromines	3001(e)	02/08/86	1/89	No
Chlorinated Aeromatics	3001(e)	02/08/86	none	No
Dyes and Pigments	3001(e)	02/08/86	none	No
Inorganic Chemical Wastes	3001(e)	02/08/86	none	No
Paint Production Wastes	3001(e)	02/08/86	none	No
Used Oil	3014(b)	11/08/86	none	No+
Management/Cleanup				
Containerized Liquids- Landfill Absorbent Prohibitions	3004(c)	02/08/86	3/89	No
Landfill Minimum Technology Requirements (Revisions To Existing Standards)	3004(o)	11/08/86	3/89	No
Incineration Standards for Industrial Boilers and Furnaces	3004(q)	11/08/86	6/89	No
Recycled Used Oil Standards	3014(c)	11/08/86	none	No
Domestic Sewage Regulations- Filling Gaps Between RCRA And CWA	3001(b)	08/08/87	none	No
Corrective Action Program	3004(u,v)	none	none	No

*GAO Report, July 1988, pp. 74-75: Delay of > 2 years or no schedule for completion.
+Recent court decision remanding EPA's decision not to list may affect scheduling.
#Unofficial. May be delayed indefinately.

HSWA DEADLINES THAT HAVE BEEN MET*

Regulation	RCRA Section	Statutory Deadline	Date Completed	Hammer Provision
Small Quantity Generators	3001(d)	03/31/86	03/24/86	Yes
Temporary Delisting Expirations	3001(f)	11/08/86	11/08/86	Yes#
Land Ban Schedule	3004(g)	11/08/86	05/28/86	No
Land Ban (Solvents/Dioxins)	3004(e)	11/08/86	11/07/86	Yes
Land Ban (California List)	3004(d)	07/08/87	07/08/87	Yes
Land Ban (Deepwell)	3004(f)	08/08/88	08/08/88	Yes
Land Ban (First Third)	3004(q)	08/08/88	08/08/88	Yes
Listing of Dioxin	3001(e)	05/08/85	01/14/85	No+
Burning and Blending (Record Keeping Only)	3004(s)	02/08/86	01/29/86	No+

The domestic sewage study and the waste minimization study both were completed very close to the statutory deadline. In addition, many of the leaking underground storage tank deadlines were met within one year of the statutory schedule.

*GAO Report, July 1988, 88-115, Page 74-75.
+Both regulations proposed prior to enactment of HSWA.
#A few determinations outstanding.

Mr. SIKORSKI. Thank you very much. They are helpful and are appreciated. In the interests of time we will put them in the record and touch on them in the questioning, which will be brief. Mr. Hirzy, are many of your colleagues looking for jobs elsewhere?

Mr. HIRZY. That is a very interesting question. As a matter of fact, last week I myself turned down an offer to go interview for a substantial job that would have increased my salary by about 35 percent, and I am certain that there are other of my colleagues in a similar situation.

Mr. SIKORSKI. I have heard in the last few weeks—especially as backwash from the pay issue that at EPA—I have had talks with people at EPA who were affected directly by that pay, or indirectly by the failed pay increase, and they feel frustrated beyond that by just the lack of esteem with which the EPA is held and frustrated by the pressures that are put on them; the kinds of issues you raise, that EPA is a less than an active agency and more of a proactive political agency.

Mr. HIRZY. That is exactly right. I think that more than money, the issues of professional esteem and the ability to accomplish a mission that one assumes one is going to be involved in when you hire on at EPA, they are tremendously frustrating factors.

Mr. SIKORSKI. Let me just say—it should be on the record again. Six years ago at this point I was going to executive session after executive session of the Oversight and Investigation Subcommittee of Energy and Commerce.

We had, I think, close to 30 of these closed door formal sworn hearings, talking to EPA officials and employees on the Burford/Gorsuch problems at the time, and I was amazed at the level of dedication that EPA employees had as a group, and most of the individuals we had testify, to just doing things.

Lawyers that were hired at a third of the salary they can get in the private sector who were typing their own briefs, answering their own phones, doing all of their clerical and secretarial work themselves, and yet they were hanging in there, and I am hopeful that the word is out that they are appreciated and that they continue to hang in there. We hope that the new President and new Administrator together with Members of Congress, both parties, can provide the resources and the direction that refresh the breezes in the EPA.

Do the Civil Service employees hired at EPA take an oath of office?

Mr. HIRZY. Yes. I did, I presume everyone else does.

Mr. SIKORSKI. And that oath of office is to what?

Mr. HIRZY. It is to preserve, protect and defend the Constitution, and essentially serve the public interest.

Mr. SIKORSKI. Do contractor employees work alongside federal employees in performing many of the Agency staff work requirements?

Mr. HIRZY. I would say so, based on my experience as a work assignment manager in the Tox Profiles program. We worked closely with contractor personnel who did, really, the scientific work on those things.

Mr. SIKORSKI. It is your feeling, in summary, that there are serious morale problems at the EPA; that the EPA is losing the re-

spect, institutional knowledge that it once had, and that decisions which affect the public health, public environment, have become more partisan, more political and that the issue of contractors and becoming just a support system for contractors is really bothersome.

Mr. HIRZY. That is a major factor. I think there are several other things that impact that, and there are some new initiatives that we have seen in labor relations, for instance, that involve participatory management quality circle type of operation that would more meaningfully engage the professional staff in EPA's decisionmaking.

That would not only improve the morale but we think improve the products of EPA's various program offices, and we have high hopes for movement in that direction with Mr. Reilly and his reputation as being an includer sort of manager.

And I think if we can get those kinds of programs at least in some pilot operations in some of the shops there, that we can demonstrate that participatory management quality circles can improve efficiency and morale and generally improve the——

Mr. SIKORSKI. The Civil Service Subcommittee would be greatly curious about what happens on that and would like to work with you on that.

Mr. HIRZY. We will be happy to stay in close touch.

Mr. SIKORSKI. Mr. Fortuna, we have heard from the Agency that the contractors they hire are not involved in the policy decisionmaking process, but rather they simply provide the EPA management with the options and the Agency employees and appointees actually pick the final option and set the policy of the EPA. Is that your analysis?

Mr. FORTUNA. I guess to the extent, looking at some of the examples I have highlighted in the testimony, I think the Land Disposal Ban Program is one the Agency has fairly good control of in terms of policy, but I think the listing-delisting area is quite another matter.

If the question is, do contractors actually sign or essentially make the right policy responses for the Agency, I do not think that is the case. I think it is a more insidious type of involvement where you have so few in-house people that have so many tasks to perform that their nose is always up against the window-pane. You do not have time to even develop policy initiatives. You do not have time to think through the options.

I think it bears investigation, to what extent many of these activities within the listing-delisting program, including things such as the organic toxicity characteristic and change to that, were initiatives that came up through the contracting network.

Again, the Inspector General identified the fact that they were uninitiated projects that were basically coming up through the contractor network, and I think that certainly is a significant problem.

Our own members, when they go to ask the Agency about the status of a petition to delist their waste, to see whether they have been able to treat it to nonhazardous levels, are constantly referred to nothing but contractors, and they come back to me and they say, do you think the contractor should be telling me that this is the

protocol, even though it is not in conformance with government specs?

Is that a policy decision? It certainly sounds like it to me. A contractor saying the level should be X instead of X minus 2. Is that not a policy decision? It certainly sounds like it to me.

The EPA people who were left to manage this program are described to me as librarians, who just sort of shuttle and shunt paper to contractor. They are not even in a position to substantively resolve scientific disputes. That is not a healthy situation.

Mr. SIKORSKI. Your discussion of the Agency's handling of the OTC regulations was disturbing. No one in the Agency could answer your questions, even the contractor was unsure whether his computer model worked. This is very telling. Is this scenario common? Has anyone at the Agency, or someone from the contractor, been able to answer your questions to date?

Mr. FORTUNA. We have never received a response. Again, we tried to get these answers within the context of the comment period. We worked for three weeks with EPA staff as well as our outside contractors, and finally with their outside contractors, and we are still unable to resolve this.

Mr. SIKORSKI. What answers would you like—what questions?

Mr. FORTUNA. I would like to know, what are the regulatory levels? Please demonstrate how the Agency's model, and how their—whether the model works, and secondly what the impact, the policy impacts are of these changed assumptions. The policy impacts being, how does it affect the regulatory levels?

Now apparently, inside the Agency some levels have been divined, or have been derived. I do not know how. But again, I think this—if this is how we are going to do Agency rule-making for something so major, I think it is a disservice to everybody in the regulatory community, because it is invariably going to be suspect, subject to legal challenge from any number of directions once it comes out, because it lacked sufficient integrity in the process of being developed.

And I guess, as an aside from the contracting process, I think the Agency needs to be asked why there are repeated reports that our very own Superfund program wants to be exempted from this organic toxicity characteristic requirement, why the Department of Energy wants to be exempted from this organic toxicity requirement, and why the number of compounds are rumored to keep dropping.

Mr. SIKORSKI. I have a whole laundry list of questions. We will ask for answers to them. Finally, you mentioned the ARC conflict where you have, as I understand it, contractors who are setting out options and contractors that have affiliates——

Mr. FORTUNA. Or subdivisions who are marketing their own technologies to implement remedies that they themselves might have recommended. Now again, I want to clarify that. It has not been a rampant problem, but it has at least been evidenced in at least certain circumstances. It is something that raises the specter of a much more insidious type of conflict of interest.

If every ARCs contractor is vertically integrated to both assess, make recommendations and implement remedies, you may wind up having an insidious form of horse-trading where different ARCs

contractors select the cleanup contractors of the neighboring region and vice versa.

Mr. SIKORSKI. We thank you, Mr. Fortuna, Mr. Hirzy and Mr. Morrison. Thank you all for joining us. Let me just make a closing statement.

This has been a long, helpful but disturbing hearing. We have heard from the GAO. We have heard from the Inspector General. We have heard from the EPA. We have heard from private association and organized Civil Servants at the EPA, and through testimony presented before the Subcommittee this morning we have a picture of an Agency which is in danger of losing control of its private contractors.

We have an agency which is losing the respect of its own employees, and to some extent the public's trust. Hopefully that will change under the new Administration. But we do have geologists being paid 30 bucks an hour to answer phones while it is claimed that the expert Civil Service chemists within the Agency are not used to their potential.

We have multimillion dollar contractors routinely and regularly getting performance awards, even though the work has been substandard. Members of the regulated environmental community cannot get answers from the Agency. Apparently no one within the Agency knows what the contractors are doing, and in some instances, we find that even some contractors do not know what they are doing.

Contractors and subcontractors are being indemnified up to the limit of the Superfund trust fund, which is supposed to be available for quick clean-up of hazardous materials which pose a threat to our health and environment. We are facing the real prospect of contractors who are being paid bonuses for less than adequate work and at the same time we are ignoring federal employees who take an oath to protect the health of each of us as well as integrity of the earth.

This makes little sense to me. We need a change. The focus within the Agency must change, making more long-lasting investments in the institution and the people that represent the institution. This investment has to begin with a stronger commitment to our Civil Servants and better management over contractors.

The hearing is adjourned.

[Whereupon the hearing was adjourned at 12:22 p.m.]

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